

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA and  
STATE OF IDAHO

Plaintiffs,

v.

, INC.,

Defendants.

CIVIL ACTION NO.



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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of certain costs incurred and to be incurred by EPA and the Department of Justice for response actions incurred in connection with the Bunker Hill Superfund Site in Shoshone County, Idaho, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Oil and

1 Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part  
2 300 (as amended) ("NCP").

3 C. In accordance with the NCP and Section 121(f)(1)(F)  
4 of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA formally notified the  
5 state of Idaho (the "State") on November 3, 1992 of negotiations  
6 with potentially responsible parties regarding the implementation  
7 of the remedial design and remedial action for the Site, and EPA  
8 has provided the State with an opportunity to participate in such  
9 negotiations and be a party to this Consent Decree.

10 D. EPA formally notified the United States Department  
11 of the Interior, the United States Forest Service, and the Coeur  
12 d'Alene Tribe on November 3, 1992 of negotiations with  
13 potentially responsible parties regarding the release of  
14 hazardous substances that may have resulted in injury to the  
15 natural resources under trusteeship and encouraged the trustees  
16 to participate in the negotiation of this Consent Decree.

17 E. The Defendants that have entered into this Consent  
18 Decree ("Settling Defendants") do not admit any liability to the  
19 Plaintiffs arising out of the transactions or occurrences alleged  
20 in the complaint.

21 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
22 EPA placed the Bunker Hill Mining and Metallurgical Complex  
23 facility on the National Priorities List, set forth at 40 C.F.R.  
24 Part 300, Appendix B, by publication in the Federal Register on  
25 September 8, 1983, 48 Fed. Reg. 40658.

26 G. The "Bunker Hill Superfund Site" or "Site" refers to  
27 an area encompassing approximately twenty-one (21) square miles,

1 that is the subject of response action selected in the attached  
2 RODS. The Site encompasses a now closed mining complex and  
3 former metallurgical and smelting facility, as well as the cities  
4 of Kellogg, Page, Pinehurst, Smelterville, and Wardner.  
5 Approximately 6,000 people live within the Site.

6 H. For the purposes of conducting the Remedial  
7 Investigation and Feasibility Study ("RI/FS"), this Site has been  
8 divided into Populated Areas and Non-Populated Areas. A separate  
9 RI/FS and Record of Decision was performed for each of these  
10 identified areas.

11 I. In April 1991, EPA and Idaho DEQ completed the  
12 Populated Areas RI/FS. Pursuant to Section 117 of CERCLA,  
13 42 U.S.C. § 9617, EPA published notice of the completion of the  
14 FS and of the proposed plan for the Populated Areas' remedial  
15 action on April 26-30, 1991, in the Shoshone News Press, a major  
16 local newspaper of general circulation. EPA provided an  
17 opportunity for written and oral comments from the public on the  
18 proposed plan for remedial action. A public hearing was held on  
19 May 23, 1991, to answer questions and take comments. A copy of  
20 the transcript of the public meeting is available to the public  
21 as part of the administrative record upon which the Regional  
22 Administrator based the selection of the response action.

23 J. The decision by EPA on the remedial action to be  
24 implemented for the Populated Areas of the Site is embodied in a  
25 final Record of Decision ("Populated Areas ROD"), executed on  
26 August 30, 1991, by EPA and the State of Idaho. The Populated  
27 Areas ROD includes a responsiveness summary to the public

1 comments. Notice of the final plan was published in accordance  
2 with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

3 K. In June 1992, EPA and some of the PRPs completed the  
4 Non-Populated Areas' RI/FS. Pursuant to Section 117 of CERCLA,  
5 42 U.S.C. § 9617, EPA published notice of the completion of the  
6 FS and of the proposed plan for remedial action on June 13, 1992,  
7 in the Shoshone News Press and the Spokesman-Review, major local  
8 newspapers of general circulation. EPA provided an opportunity  
9 for written and oral comments from the public on the proposed  
10 plan for remedial action. A public meeting was held on June 25,  
11 1992, to answer questions and take comments. A copy of the  
12 transcript of the public meeting is available to the public as  
13 part of the administrative record upon which the Regional  
14 Administrator based the selection of the response action.

15 L. The decision by EPA on the remedial action to be  
16 implemented for the Non-Populated Areas of the Site is embodied  
17 in a final ROD ("Non-Populated Areas ROD"), executed on  
18 September 22, 1992, by EPA and the State of Idaho. The Non-  
19 Populated Area ROD includes a responsiveness summary to the  
20 public comments. Notice of the final plan was published in  
21 accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

22 M. Throughout the years, a number of removal actions  
23 have been conducted at this Site. Some of these removal actions  
24 are continuing to be conducted pursuant to existing  
25 administrative orders issued pursuant to Section 106 of CERCLA,  
26 42 U.S.C. § 9106. The work required by these administrative  
27

1 orders is incorporated into the RODs and this Consent Decree by  
2 reference.

3 N. Based on the information presently available to EPA,  
4 EPA believes that the Work will be properly and promptly  
5 conducted by the Settling Defendants if conducted in accordance  
6 with the requirements of this Consent Decree and its appendices.

7 O. Solely for the purposes of Section 113(j) of CERCLA,  
8 42 U.S.C. § 9613(j), the Remedial Action selected by the RODs and  
9 the Work to be performed by the Settling Defendants shall  
10 constitute a response action taken or ordered by the President.

11 P. The Parties recognize, and the Court by entering  
12 this Consent Decree finds, that this Consent Decree has been  
13 negotiated by the Parties in good faith and implementation of  
14 this Consent Decree will expedite the cleanup of the Site and  
15 will avoid prolonged and complicated litigation between the  
16 Parties, and that this Consent Decree is fair, reasonable, and in  
17 the public interest.

18 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:  
19

## 20 II. JURISDICTION

21 1. This Court has jurisdiction over the subject matter  
22 of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and  
23 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has  
24 personal jurisdiction over the Settling Defendants. Solely for  
25 the purposes of this Consent Decree and the underlying  
26 complaints, Settling Defendants waive all objections and defenses  
27 that they may have to jurisdiction of the Court or to venue in

1 this District. Settling Defendants shall not challenge the terms  
2 of this Consent Decree or this Court's jurisdiction to enter and  
3 enforce this Consent Decree.

### 4 5 III. PARTIES BOUND

6 2. This Consent Decree applies to and is binding upon  
7 the United States and the State and upon Settling Defendants and  
8 their heirs, successors, and assigns. Any change in ownership or  
9 corporate status of a Settling Defendant including, but not  
10 limited to, any transfer of assets or real or personal property  
11 shall in no way alter such Settling Defendant's responsibilities  
12 under this Consent Decree.

13 3. Settling Defendants shall provide a copy of this  
14 Consent Decree to each contractor hired to perform the Work (as  
15 defined below) required by this Consent Decree and to each person  
16 representing any Settling Defendant with respect to the Site or  
17 the Work and shall condition all contracts entered into hereunder  
18 upon performance of the Work in conformity with the terms of this  
19 Consent Decree. Settling Defendants or their contractors shall  
20 provide written notice of the Consent Decree to all  
21 subcontractors hired to perform any portion of the Work required  
22 by this Consent Decree. Settling Defendants shall nonetheless be  
23 responsible for ensuring that their contractors and  
24 subcontractors perform the Work contemplated herein in accordance  
25 with this Consent Decree. With regard to the activities  
26 undertaken pursuant to this Consent Decree, each contractor and  
27 subcontractor shall be deemed to be in a contractual relationship

1 with the Settling Defendants within the meaning of Section  
2 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

4 IV. DEFINITIONS

5 4. Unless otherwise expressly provided herein, terms  
6 used in this Consent Decree which are defined in CERCLA or in  
7 regulations promulgated under CERCLA shall have the meaning  
8 assigned to them in CERCLA or in such regulations. Whenever  
9 terms listed below are used in this Consent Decree or in the  
10 appendices attached hereto and incorporated hereunder, the  
11 following definitions shall apply:

12 A. "CERCLA" shall mean the Comprehensive Environmental  
13 Response, Compensation, and Liability Act of 1980, as amended,  
14 42 U.S.C. §§ 9601 et seq;

15 B. "Consent Decree" shall mean this Decree and all  
16 appendices attached hereto (listed in Section XXX). In the event  
17 of conflict between this Decree and any appendix, this Decree  
18 shall control;

19 C. "Day" shall mean a calendar day unless expressly  
20 stated to be a working day. "Working day" shall mean a day other  
21 than a Saturday, Sunday, or Federal holiday. In computing any  
22 period of time under this Consent Decree, where the last day  
23 would fall on a Saturday, Sunday, or Federal holiday, the period  
24 shall run until the close of business of the next working day;

25 D. "EPA" shall mean the United States Environmental  
26 Protection Agency and any successor departments or agencies of  
27 the United States;



1           E.    "Future Response Costs" shall mean all costs,  
2 including, but not limited to, direct and indirect costs, that  
3 the United States and the State incur in reviewing or developing  
4 plans, reports, and other items pursuant to this Consent Decree,  
5 verifying the Work, or otherwise implementing, overseeing, or  
6 enforcing this Consent Decree, including, but not limited to,  
7 payroll costs, contractor costs, travel costs, laboratory costs,  
8 the costs incurred pursuant to Sections VII, VIII, X (including,  
9 but not limited to, attorneys fees and the amount of just  
10 compensation), XVI, and Paragraph 84 of Section XXII. Future  
11 Response Costs shall also include all costs, including direct and  
12 indirect costs, paid by the United States and the State in  
13 connection with the Site after August 1992.

14           F.    "Idaho DEQ" shall mean the State Division of  
15 Environmental Quality and any successor departments or agencies  
16 of the State;

17           G.    "National Contingency Plan" or "NCP" shall mean the  
18 National Oil and Hazardous Substances Pollution Contingency Plan  
19 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
20 codified at 40 C.F.R. Part 300, including, but not limited to,  
21 any amendments thereto;

22           H.    "Operation and Maintenance" or "O & M" shall mean  
23 all activities required to maintain the effectiveness of the  
24 Remedial Action as required under the Operation and Maintenance  
25 Plan approved or developed by EPA pursuant to this Consent Decree  
26 and the Statement of Work (SOW);  
27

1 I. "Owner Settling Defendants" shall mean the Settling  
2 Defendants listed in Appendix E;

3 J. "Paragraph" shall mean a portion of this Consent  
4 Decree identified by an Arabic numeral or an upper case letter;

5 K. "Parties" shall mean the United States, the State of  
6 Idaho, and the Settling Defendants;

7 L. "Past Response Costs" shall mean all costs,  
8 including, but not limited to, direct and indirect costs and  
9 interest, that the United States and the State incurred and paid  
10 with regard to the Site prior to August 1992;

11 M. "Performance Standards" shall mean those cleanup  
12 standards, standards of control, and other substantive  
13 requirements, criteria, or limitations set forth in the RODs or  
14 the SOW;

15 N. "Plaintiffs" shall mean the United States and the  
16 State of Idaho;

17 O. "RCRA" shall mean the Solid Waste Disposal Act, as  
18 amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource  
19 Conservation and Recovery Act);

20 P. "Record(s) of Decision" or "ROD(s)" shall mean both  
21 the EPA Record of Decision for Populated Areas signed by EPA on  
22 August 30, 1991, and the EPA Record of Decision for Non-Populated  
23 Areas signed by EPA on September 22, 1992, relating to the Site,  
24 and all attachments thereto;

25 Q. "Remedial Action" shall mean those activities,  
26 except for O & M, to be undertaken by the Settling Defendants to  
27 implement the final plans and specifications, submitted by the

1 Settling Defendants pursuant to the Remedial Design Work Plan,  
2 and approved by EPA;

3 R. "Remedial Action Work Plan" shall mean the document  
4 submitted by the Settling Defendants pursuant to this Consent  
5 Decree and described more fully in the SOW;

6 S. "Remedial Design" shall mean those activities to be  
7 undertaken by the Settling Defendants to develop the final plans  
8 and specifications for the Remedial Action pursuant to the  
9 Remedial Design Work Plan;

10 T. "Remedial Design Work Plan" shall mean the document  
11 submitted by the Settling Defendants pursuant to this Consent  
12 Decree and described more fully in the SOW;

13 U. "Section" shall mean a portion of this Consent  
14 Decree identified by a Roman numeral;

15 V. "Settling Defendants" shall mean those Parties  
16 identified in Appendices D (Non-Owner Settling Defendants) and  
17 E (Owner Settling Defendants);

18 W. "Site" shall refer to an area encompassing  
19 approximately twenty-one (21) square miles, that is the subject  
20 of response action selected in the attached RODs. The Site is  
21 located in the Silver Valley and includes a now-closed mining  
22 complex and former metallurgical and smelting facility, as well  
23 as the cities of Kellogg, Page, Pinehurst, Smelterville, and  
24 Wardner and is delineated by the following geographical  
25 description, exclusive of the waters of the South Fork of the  
26 Coeur d'Alene River: [geographical description]

27 X. "State" shall mean the State of Idaho;

1 Y. "Statement of Work" or "SOW" shall mean the  
2 statement of work for implementation of the Remedial Design,  
3 Remedial Action, and Operation and Maintenance at the Site, as  
4 set forth in Appendix B to this Consent Decree and any  
5 modifications made in accordance with this Consent Decree;

6 Z. "Supervising Contractor" shall mean the principal  
7 contractor retained by the Settling Defendants to supervise and  
8 direct the implementation of the Work under this Consent Decree;

9 aa. "United States" shall mean the United States of  
10 America;

11 bb. "Waste Material" shall mean (1) any "hazardous  
12 substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);  
13 (2) any pollutant or contaminant under Section 101(33),  
14 42 U.S.C. § 9601(33); (3) any "solid waste" under Section  
15 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous  
16 material" under [State statutory citation]; and

17 cc. "Work" shall mean all activities Settling Defendants  
18 are required to perform under this Consent Decree, except those  
19 required by Section XXVI (Retention of Records).

20  
21 V. GENERAL PROVISIONS

22 5. Objectives of the Parties

23 The objectives of the Parties in entering into this  
24 Consent Decree are to protect public health or welfare or the  
25 environment at the Site by the design and implementation of  
26 response actions at the Site by the Settling Defendants and to  
27 reimburse response costs of the Plaintiffs.

1           6.   Commitments by Settling Defendants

2           a.   Settling Defendants shall finance and perform the  
3 Work in accordance with this Consent Decree and all plans,  
4 standards, specifications, and schedules set forth in or  
5 developed and approved by EPA pursuant to this Consent Decree.  
6 Settling Defendants shall also reimburse the United States and  
7 the State for Past Response Costs and Future Response Costs as  
8 provided in this Consent Decree.

9           b.   The obligations of Settling Defendants to finance  
10 and perform the Work and to pay amounts owed the United States  
11 and the State under this Consent Decree are joint and several.  
12 In the event of the insolvency or other failure of any one or  
13 more Settling Defendants to implement the requirements of this  
14 Consent Decree, the remaining Settling Defendants shall complete  
15 all such requirements.

16           7.   Compliance With Applicable Law

17           All activities undertaken by Settling Defendants pursuant  
18 to this Consent Decree shall be performed in accordance with the  
19 requirements of all applicable federal and state laws and  
20 regulations. Settling Defendants must also comply with all  
21 applicable or relevant and appropriate requirements of all  
22 Federal and state environmental laws as set forth in the RODs and  
23 the SOW. The activities conducted pursuant to this Consent  
24 Decree, if approved by EPA, shall be considered to be consistent  
25 with the NCP.

26           8.   Permits

27           a.   As provided in Section 121(e) of CERCLA,

1 42 U.S.C. § 9621(e), and § 300.5 of the NCP, no permit shall be  
2 required for any portion of the Work conducted entirely on-Site.  
3 Where any portion of the Work requires a federal or state permit  
4 or approval, Settling Defendants shall submit timely and complete  
5 applications and take all other actions necessary to obtain all  
6 such permits or approvals.

7       b. The Settling Defendants may seek relief under the  
8 provisions of Section XIX (Force Majeure) of this Consent Decree  
9 for any delay in the performance of the Work resulting from a  
10 failure to obtain, or a delay in obtaining, any permit required  
11 for the Work.

12       c. This Consent Decree is not, and shall not be  
13 construed to be, a permit issued pursuant to any federal or state  
14 statute or regulation, nor shall any releases at or from the Site  
15 subsequent to entry of this Consent Decree constitute federally  
16 permitted releases unless such releases are made in compliance  
17 with a federal or state permit specifically authorizing such  
18 releases.

19       9. Notice of Obligations to Successors-in-Title

20       a. Within fifteen (15) days after the entry of this  
21 Consent Decree, the Owner Settling Defendant(s) shall record a  
22 certified copy of this Consent Decree with the appropriate  
23 Recorder's Office. Thereafter, each deed, title, or other  
24 instrument conveying an interest in the property of Settling  
25 Defendants included in the Site shall contain a notice stating  
26 that the property is subject to this Consent Decree and any lien  
27 retained by the United States, and shall reference the recorded

1 location of the Consent Decree and any restrictions applicable to  
2 the property under this Consent Decree.

3       b. The obligations of each Owner Settling Defendant  
4 with respect to the provision of access under Section X (Access)  
5 and the implementation of institutional controls shall be binding  
6 upon any and all such Settling Defendants and any and all persons  
7 who subsequently acquire any such interest or portion thereof  
8 (hereinafter "Successors-in-Title"). Within fifteen (15) days  
9 after the entry of this Consent Decree, each Owner Settling  
10 Defendant shall record at the appropriate Recorder's Office a  
11 notice of obligation to provide access under Section X (Access)  
12 and related covenants. Each subsequent instrument conveying an  
13 interest to any such property included in the Site shall  
14 reference the recorded location of such notice and covenants  
15 applicable to the property.

16       c. Any Owner Settling Defendant and any  
17 Successor-in-Title shall, at least thirty (30) days prior to the  
18 conveyance of any such interest, give written notice of this  
19 Consent Decree to the grantee and written notice to EPA and the  
20 State of the proposed conveyance, including the name and address  
21 of the grantee, and the date on which notice of the Consent  
22 Decree was given to the grantee. In the event of any such  
23 conveyance, the Settling Defendants' obligations under this  
24 Consent Decree, including their obligations to provide or secure  
25 access pursuant to Section X, shall continue to be met by the  
26 Settling Defendants. In addition, if the United States and the  
27 State approve, the grantee may perform some or all of the Work

1 under this Consent Decree. In no event shall the conveyance of  
2 an interest in property that includes, or is a portion of, the  
3 Site release or otherwise affect the liability of the Settling  
4 Defendants to comply with the Consent Decree.

5  
6 VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

7 10. Selection of Supervising Contractor.

8 a. All aspects of the Work to be performed by Settling  
9 Defendants pursuant to Sections VI (Performance of the Work by  
10 Settling Defendants), VII (Additional Response Actions), VIII  
11 (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling  
12 and Data Analysis) of this Consent Decree shall be under the  
13 direction and supervision of the Supervising Contractor, the  
14 selection of which shall be subject to disapproval by EPA after a  
15 reasonable opportunity for review and comment by the State.  
16 Within ten (10) days after the lodging of this Consent Decree,  
17 Settling Defendants shall notify EPA and the State, in writing,  
18 of the name, title, and qualifications of any contractor proposed  
19 to be the Supervising Contractor. EPA will issue a notice of  
20 disapproval or an authorization to proceed. If at any time  
21 thereafter, Settling Defendants propose to change a Supervising  
22 Contractor, Settling Defendants shall give such notice to EPA and  
23 the State and must obtain an authorization to proceed from EPA,  
24 after a reasonable opportunity for review and comment by the  
25 State, before the new Supervising Contractor performs, directs,  
26 or supervises any Work under this Consent Decree.



1           b. If EPA disapproves a proposed Supervising  
2 Contractor, EPA will notify Settling Defendants, in writing.  
3 Settling Defendants shall submit to EPA and the State a list of  
4 contractors, including the qualifications of each contractor,  
5 that would be acceptable to them within thirty (30) days of  
6 receipt of EPA's disapproval of the contractor previously  
7 proposed. EPA will provide written notice of the names of any  
8 contractor(s) that it disapproves and an authorization to proceed  
9 with respect to any of the other contractors. Settling  
10 Defendants may select any contractor from that list that is not  
11 disapproved and shall notify EPA and the State of the name of the  
12 contractor selected within twenty-one (21) days of EPA's  
13 authorization to proceed.

14           c. If EPA fails to provide written notice of its  
15 authorization to proceed or disapproval as provided in this  
16 Paragraph and this failure prevents the Settling Defendants from  
17 meeting one or more deadlines in a plan approved by the EPA  
18 pursuant to this Consent Decree, Settling Defendants may seek  
19 relief under the provisions of Section XIX (Force Majeure)  
20 hereof.

21           11. Remedial Design and Remedial Action

22           a. All Work under this Consent Decree is subject to  
23 approval by EPA. Settling Defendants shall, in accordance with  
24 the Statement of Work, prepare and submit Work Plan(s) for  
25 approval by EPA pursuant to Section XII (Submissions Requiring  
26 Agency Approval). Once the Work Plan, and as required by the  
27 Statement of Work, the Health and Safety Plan, the Quality

1 Assurance Project Plan, the Sampling Plan, or other plans,  
2 designs and reports are approved by EPA, Settling Defendants  
3 shall implement the Work Plan(s).

4       b. Settling Defendants shall submit deliverables and  
5 perform work required under the Statement of Work in accordance  
6 with the schedules set forth and referred to therein. Once the  
7 deliverables are approved pursuant to Section XII (Submissions  
8 Requiring Agency Approval), they shall be incorporated into and  
9 be enforceable under this Consent Decree.

10       12. Unless otherwise directed by EPA, Settling  
11 Defendants shall not commence physical on-Site activities prior  
12 to EPA approval.

13       13. The Work performed by the Settling Defendants  
14 pursuant to this Consent Decree shall include the obligation to  
15 achieve the Performance Standards.

16       14. Settling Defendants acknowledge and agree that  
17 nothing in this Consent Decree, the SOW, or the Remedial Design  
18 or Remedial Action Work Plans constitutes a warranty or  
19 representation of any kind by Plaintiffs that compliance with the  
20 work requirements set forth in the SOW and the Work Plans will  
21 achieve the Performance Standards. Settling Defendants'  
22 compliance with the work requirements shall not foreclose  
23 Plaintiffs from seeking compliance with all terms and conditions  
24 of this Consent Decree, including, but not limited to, the  
25 applicable Performance Standards.

26       15. Settling Defendants shall, prior to any off-Site  
27 shipment of Waste Material to an out-of-state waste management

1 facility, provide written notification to the appropriate state  
2 environmental official in the receiving facility's state and to  
3 the EPA Project Coordinator of such shipment of Waste Material.  
4 However, this notification requirement shall not apply to any  
5 off-Site shipments when the total volume of all such shipments  
6 will not exceed ten (10) cubic yards.

7       a. The Settling Defendants shall include in the written  
8 notification the following information, where available: (1) the  
9 name and location of the facility to which the Waste Material are  
10 to be shipped; (2) the type and quantity of the Waste Material to  
11 be shipped; (3) the expected schedule for the shipment of the  
12 Waste Material; and (4) the method of transportation. The  
13 Settling Defendants shall notify the state in which the planned  
14 receiving facility is located of major changes in the shipment  
15 plan, such as a decision to ship the Waste Material to another  
16 facility within the same state, or to a facility in another  
17 state.

18       b. The identity of the receiving facility and state  
19 will be determined by the Settling Defendants following the award  
20 of the contract for Remedial Action construction. The Settling  
21 Defendants shall provide the information required by Paragraph  
22 15.a as soon as practicable after the award of the contract and  
23 before the Waste Material is actually shipped.

## 24 25                   VII. ADDITIONAL RESPONSE ACTIONS

26       16. In the event that EPA determines or the Settling  
27 Defendants propose that additional response actions are necessary

1 to meet the Performance Standards or to maintain the Performance  
2 Standards after certification of remedial action is granted  
3 pursuant to Paragraph 47(b), or to carry out the remedy selected  
4 in the RODs, notification of such additional response actions  
5 shall be provided to the Project Coordinator for the other  
6 parties.

7           17. Within thirty (30) days of receipt of notice from  
8 EPA or Settling Defendants pursuant to Paragraph 16 that  
9 additional response actions are necessary (or such longer time as  
10 may be specified by EPA), Settling Defendants shall submit for  
11 approval by EPA, after reasonable opportunity for review and  
12 comment by the State, a work plan for the additional response  
13 actions. The plan shall conform to the applicable requirements  
14 of Paragraphs 11 and 12. Upon approval of the plan pursuant to  
15 Section XII (Submissions Requiring Agency Approval), Settling  
16 Defendants shall implement the plan for additional response  
17 actions in accordance with the schedule contained therein.

18           18. Any additional response actions that Settling  
19 Defendants propose are necessary to meet the Performance  
20 Standards or to carry out the remedy selected in the RODs shall  
21 be subject to approval by EPA, after reasonable opportunity for  
22 review and comment by the State, and, if authorized by EPA, shall  
23 be completed by Settling Defendants in accordance with plans,  
24 specifications, and schedules approved or established by EPA  
25 pursuant to Section XII (Submissions Requiring Agency Approval).

26           19. Settling Defendants may invoke the procedures set  
27 forth in Section XX (Dispute Resolution) to dispute EPA's

1 determination that additional response actions are necessary to  
2 meet the Performance Standards or to carry out the remedy  
3 selected in the RODs. Such a dispute shall be resolved pursuant  
4 to Paragraphs 62-65 of this Consent Decree.

5  
6 VIII. EPA PERIODIC REVIEW

7 20. Settling Defendants shall conduct any studies and  
8 investigations as requested by EPA in order to permit EPA to  
9 conduct reviews at least every five (5) years as required by  
10 Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) and any applicable  
11 regulations.

12 21. If required by Sections 113(k)(2) or 117 of CERCLA,  
13 42 U.S.C §§ 9613(k)(2) or 9617, Settling Defendants and the  
14 public will be provided with an opportunity to comment on any  
15 further response actions proposed by EPA as a result of the  
16 review conducted pursuant to Section 121(c), 42 U.S.C § 9621(c)  
17 of CERCLA and to submit written comments for the record during  
18 the public comment period. After the period for submission of  
19 written comments is closed, the Regional Administrator, EPA  
20 Region 10, or his/her delegate will determine in writing whether  
21 further response actions are appropriate.

22 22. If the Regional Administrator, EPA Region 10, or  
23 his/her delegate determines that information received, in whole  
24 or in part, during the review conducted pursuant to Section  
25 121(c) of CERCLA, 42 U.S.C § 9621(c), indicates that the Remedial  
26 Action is not protective of human health and the environment, the  
27 Settling Defendants shall undertake any further response actions

1 EPA has determined are appropriate, unless their liability for  
2 such further response actions is barred by the Covenant Not to  
3 Sue set forth in Section XXII. Settling Defendants shall submit  
4 a plan for such work to EPA for approval in accordance with the  
5 procedures set forth in Section VI (Performance of the Work by  
6 Settling Defendants) and shall implement the plan approved by  
7 EPA. The Settling Defendants may invoke the procedures set forth  
8 in Section XX (Dispute Resolution) to dispute (1) EPA's  
9 determination that the remedial action is not protective of human  
10 health and the environment, (2) EPA's selection of the further  
11 response actions ordered as arbitrary and capricious or otherwise  
12 not in accordance with law, or (3) EPA's determination that the  
13 Settling Defendant's liability for the further response actions  
14 requested is reserved in Paragraphs 80, 81, or 83 or otherwise  
15 not barred by the Covenant Not to Sue set forth in Section XXII.

16  
17 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

18 23. Settling Defendants shall use quality assurance,  
19 quality control, and chain of custody procedures for all samples  
20 in accordance with EPA's "Interim Guidelines and Specifications  
21 For Preparing Quality Assurance Project Plans," December 1980,  
22 (QAMS-005/80); "Data Quality Objective Guidance,"  
23 (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures  
24 Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R);  
25 and subsequent amendments to such guidelines upon notification by  
26 EPA to Settling Defendants of such amendment. Amended guidelines  
27 shall apply only to procedures conducted after such notification.

1 Prior to the commencement of any monitoring project under this  
2 Consent Decree, Settling Defendants shall submit to EPA for  
3 approval, after a reasonable opportunity for review and comment  
4 by the State, a Quality Assurance Project Plan ("QAPP") to EPA  
5 and the State that is consistent with the SOW, the NCP, and  
6 applicable guidance documents. If relevant to the proceeding,  
7 the Parties agree that validated sampling data generated in  
8 accordance with the QAPP(s) and reviewed and approved by EPA  
9 shall be admissible as evidence, without objection, in any  
10 proceeding under this Decree. Settling Defendants shall ensure  
11 that EPA and State personnel and their authorized representatives  
12 are allowed access at reasonable times to all laboratories  
13 utilized by Settling Defendants in implementing this Consent  
14 Decree. In addition, Settling Defendants shall ensure that such  
15 laboratories shall analyze all samples submitted by EPA pursuant  
16 to the QAPP for quality assurance monitoring. Settling  
17 Defendants shall ensure that the laboratories they utilize for  
18 the analysis of samples taken pursuant to this Decree perform all  
19 analyses according to accepted EPA methods. Settling Defendants  
20 shall ensure that all laboratories they use for analysis of  
21 samples taken pursuant to this Consent Decree participate in an  
22 EPA or EPA-equivalent QA/QC program.

23 24. Upon request, the Settling Defendants shall allow  
24 split or duplicate samples to be taken by EPA and the State or  
25 their authorized representatives. Settling Defendants shall  
26 notify EPA and the State not less than twenty-eight (28) days in  
27 advance of any sample collection activity unless shorter notice

1 is agreed to by EPA. In addition, EPA and the State shall have  
2 the right to take any additional samples that EPA or the State  
3 deem necessary. Upon request, EPA and the State shall allow the  
4 Settling Defendants to take split or duplicate samples of any  
5 samples it takes as part of the Plaintiffs' oversight of the  
6 Settling Defendant's implementation of the Work.

7           25. Settling Defendants shall submit to EPA and the  
8 State four (4) copies of the results of all sampling and/or tests  
9 or other data obtained or generated by or on behalf of Settling  
10 Defendants with respect to the Site and/or the implementation of  
11 this Consent Decree unless EPA agrees otherwise.

12           26. Notwithstanding any provision of this Consent  
13 Decree, the United States and the State hereby retains all of  
14 their information gathering and inspection authorities and  
15 rights, including enforcement actions related thereto, under  
16 CERCLA, RCRA, and any other applicable statutes or regulations.

17  
18                           X. ACCESS

19           27. Commencing upon the date of lodging of this Consent  
20 Decree, the Settling Defendants agree to provide the United  
21 States, the State, and their representatives, including EPA and  
22 its contractors, access at all reasonable times to the Site and  
23 any other property to which access is required for the  
24 implementation of this Consent Decree, to the extent access to  
25 the property is controlled by Settling Defendants, for the  
26 purposes of conducting any activity related to this Consent  
27 Decree including, but not limited to:



- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within forty-five (45) days of the date of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps

1 Settling Defendants have taken to attempt to obtain access. The  
2 United States or the State may, as it deems appropriate, assist  
3 Settling Defendants in obtaining access. Settling Defendants  
4 shall reimburse the United States or the State, in accordance  
5 with the procedures in Section XVII (Reimbursement of Response  
6 Costs), for all costs incurred by the United States in obtaining  
7 access.

8 29. Notwithstanding any provision of this Consent  
9 Decree, the United States and the State retain all of their  
10 access authorities and rights, including enforcement authorities  
11 related thereto, under CERCLA, RCRA, and any other applicable  
12 statute or regulations.

#### 13 14 XI. REPORTING REQUIREMENTS

15 30. In addition to any other requirement of this Consent  
16 Decree, Settling Defendants shall submit to EPA and the State  
17 four (4) copies of written monthly progress reports that:

- 18 (a) describe the actions which have been taken toward achieving  
19 compliance with this Consent Decree during the previous month;  
20 (b) include a summary of all results of sampling and tests and  
21 all other data received or generated by Settling Defendants or  
22 their contractors or agents in the previous month; (c) identify  
23 all work plans, plans, and other deliverables required by this  
24 Consent Decree completed and submitted during the previous month;  
25 (d) describe all actions, including, but not limited to, data  
26 collection and implementation of work plans, which are scheduled  
27 for the next six (6) weeks, and provide other information

1 relating to the progress of construction, including, but not  
2 limited to, critical path diagrams, Gant charts and Pert charts;  
3 (e) include information regarding percentage of completion,  
4 unresolved delays encountered or anticipated that may affect the  
5 future schedule for implementation of the Work, and a description  
6 of efforts made to mitigate those delays or anticipated delays;  
7 (f) include any modifications to the work plans or other  
8 schedules that Settling Defendants have proposed to EPA or that  
9 have been approved by EPA; and (g) describe all activities  
10 undertaken in support of the Community Relations Plan during the  
11 previous month and those to be undertaken in the next six (6)  
12 weeks. Settling Defendants shall submit these progress reports  
13 to EPA and the State by the tenth (10th) day of every month  
14 following the lodging of this Consent Decree until EPA notifies  
15 the Settling Defendants pursuant to Paragraph 48.b of Section XV  
16 (Certification of Completion). If requested by EPA or the State,  
17 Settling Defendants shall also provide briefings for EPA and the  
18 State to discuss the progress of the Work.

19 31. The Settling Defendants shall notify EPA of any  
20 change in the schedule described in the monthly progress report  
21 for the performance of any activity, including, but not limited  
22 to, data collection and implementation of work plans, no later  
23 than seven (7) days prior to the performance of the activity.

24 32. Upon the occurrence of any event during performance  
25 of the Work that Settling Defendants are required to report  
26 pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section  
27 304 of the Emergency Planning and Community Right-to-know Act

(EPCRA), 42 U.S.C. § 11004 Settling Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 10, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within twenty (20) days of the onset of such an event, Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit four (4) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports, and data to the State.

35. All reports and other documents submitted by Settling Defendants to EPA, other than the monthly progress reports referred to above, which purport to document Settling Defendants' compliance with the terms of this Consent Decree

1 shall be signed by an authorized representative of the Settling  
2 Defendants.

3  
4 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

5 36. After review of any plan, report, or other item  
6 which is required to be submitted for approval pursuant to this  
7 Consent Decree, EPA, after reasonable opportunity for review and  
8 comment by the State, shall: (a) approve, in whole or in part,  
9 the submission; (b) approve the submission upon specified  
10 conditions; (c) modify the submission to cure the deficiencies;  
11 (d) disapprove, in whole or in part, the submission, directing  
12 that the Settling Defendants modify the submission; or (e) any  
13 combination of the above.

14 37. In the event of approval, approval upon conditions,  
15 or modification by EPA, pursuant to Paragraph 36(a), (b), or (c),  
16 Settling Defendants shall proceed to take any action required by  
17 the plan, report, or other item, as approved or modified by EPA  
18 subject only to their right to invoke the Dispute Resolution  
19 procedures set forth in Section XX (Dispute Resolution) with  
20 respect to the modifications or conditions made by EPA. In the  
21 event that EPA modifies the submission to cure the deficiencies  
22 pursuant to Paragraph 36(c) and the submission has a material  
23 defect, EPA retains its right to seek stipulated penalties, as  
24 provided in Section XXI.

25 38. a. Upon receipt of a notice of disapproval  
26 pursuant to Paragraph 36(d), Settling Defendants shall, within  
27 fourteen (14) days or such other time as specified by EPA in such

1 notice, correct the deficiencies and resubmit the plan, report,  
2 or other item for approval. Any stipulated penalties applicable  
3 to the submission, as provided in Section XXI, shall accrue  
4 during the 14-day period or otherwise specified period but shall  
5 not be payable unless the resubmission is disapproved or modified  
6 due to a material defect as provided in Paragraph 39.

7           b. Notwithstanding the receipt of a notice of  
8 disapproval pursuant to Paragraph 36(d), Settling Defendants  
9 shall proceed, at the direction of EPA, to take any action  
10 required by any non-deficient portion of the submission.  
11 Implementation of any non-deficient portion of a submission shall  
12 not relieve Settling Defendants of any liability for stipulated  
13 penalties under Section XXI (Stipulated Penalties).

14           39. In the event that a resubmitted plan, report or  
15 other item, or portion thereof, is disapproved by EPA, EPA may  
16 again require the Settling Defendants to correct the  
17 deficiencies, in accordance with the preceding Paragraphs. EPA  
18 also retains the right to amend or develop the plan, report or  
19 other item. Settling Defendants shall implement any such plan,  
20 report, or item as amended or developed by EPA, subject only to  
21 their right to invoke the procedures set forth in Section XX  
22 (Dispute Resolution).

23           40. If upon resubmission, a plan, report, or item is  
24 disapproved or modified by EPA due to a material defect, Settling  
25 Defendants shall be deemed to have failed to submit such plan,  
26 report, or item timely and adequately unless the Settling  
27 Defendants invoke the dispute resolution procedures set forth in

1 Section XX (Dispute Resolution) and EPA's action is overturned  
2 pursuant to that Section. The provisions of Section XX (Dispute  
3 Resolution) and Section XXI (Stipulated Penalties) shall govern  
4 the implementation of the Work and accrual and payment of any  
5 stipulated penalties during Dispute Resolution. If EPA's  
6 disapproval or modification is upheld, stipulated penalties shall  
7 accrue for such violation from the date on which the initial  
8 submission was originally required, as provided in Section XXI.

9 41. All plans, reports, and other items required to be  
10 submitted to EPA under this Consent Decree shall, upon approval  
11 or modification by EPA, be enforceable under this Consent Decree.  
12 In the event EPA approves or modifies a portion of a plan,  
13 report, or other item required to be submitted to EPA under this  
14 Consent Decree, the approved or modified portion shall be  
15 enforceable under this Consent Decree.

### 16 17 XIII. PROJECT COORDINATORS

18 42. Within twenty (20) days of lodging this Consent  
19 Decree, Settling Defendants, the State, and EPA will notify each  
20 other, in writing, of the name, address, and telephone number of  
21 their respective designated Project Coordinators and Alternate  
22 Project Coordinators. If a Project Coordinator or Alternate  
23 Project Coordinator initially designated is changed, the identity  
24 of the successor will be given to the other parties at least  
25 five (5) working days before the changes occur, unless  
26 impracticable, but in no event later than the actual day the  
27 change is made. The Settling Defendants' Project Coordinator

1 shall be subject to disapproval by EPA and shall have the  
2 technical expertise sufficient to adequately oversee all aspects  
3 of the Work. The Settling Defendants' Project Coordinator shall  
4 not be an attorney for any of the Settling Defendants in this  
5 matter. He or she may assign other representatives, including  
6 other contractors, to serve as a Site representative for  
7 oversight of performance of daily operations during remedial  
8 activities.

9         43. Plaintiffs may designate other representatives,  
10 including, but not limited to, EPA and State employees, and  
11 federal and State contractors and consultants, to observe and  
12 monitor the progress of any activity undertaken pursuant to this  
13 Consent Decree. EPA's Project Coordinator and Alternate Project  
14 Coordinator shall have the authority lawfully vested in a  
15 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)  
16 by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project  
17 Coordinator or Alternate Project Coordinator shall have  
18 authority, consistent with the NCP, to halt any Work required by  
19 this Consent Decree and to take any necessary response action  
20 when s/he determines that conditions at the Site constitute an  
21 emergency situation or may present an immediate threat to public  
22 health or welfare or the environment due to release or threatened  
23 release of Waste Material.

24         44. EPA's Project Coordinator and the Settling  
25 Defendants' Project Coordinator will meet, at a minimum, on a  
26 monthly basis.



1                   XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

2                   45. Within thirty (30) days of entry of this Consent  
3 Decree, Settling Defendants shall establish and maintain  
4 financial security in the amount of one hundred million dollars  
5 in one of the following forms:

- 6                   (a) A surety bond guaranteeing performance of the Work;  
7                   (b) One or more irrevocable letters of credit equalling  
8                   the total estimated cost of the Work;  
9                   (c) A trust fund;  
10                  (d) A guarantee to perform the Work by one or more  
11                  parent corporations or subsidiaries, or by one or  
12                  more unrelated corporations that have a substantial  
13                  business relationship with at least one of the  
14                  Settling Defendants; or  
15                  (e) A demonstration that one or more of the Settling  
16                  Defendants satisfy the requirements of 40 C.F.R.  
17                  Part 264.143(f).

18                  46. If the Settling Defendants seek to demonstrate the  
19                  ability to complete the Work through a guarantee by a third party  
20                  pursuant to Paragraph 45(d) of this Consent Decree, Settling  
21                  Defendants shall demonstrate that the guarantor satisfies the  
22                  requirements of 40 C.F.R. Part 264.143(f). If Settling  
23                  Defendants seek to demonstrate their ability to complete the Work  
24                  by means of the financial test or the corporate guarantee  
25                  pursuant to Paragraph 45(d) or (e), they shall resubmit sworn  
26                  statements conveying the information required by 40 C.F.R. Part  
27                  264.143(f) annually, on the anniversary of the effective date of  
28                  this Consent Decree. In the event that EPA, after a reasonable  
                  opportunity for review and comment by the State, determines at  
                  any time that the financial assurances provided pursuant to this

1 Section are inadequate, Settling Defendants shall, within thirty  
2 (30) days of receipt of notice of EPA's determination, obtain and  
3 present to EPA for approval one of the other forms of financial  
4 assurance listed in Paragraph 45 of this Consent Decree.  
5 Settling Defendants' inability to demonstrate financial ability  
6 to complete the Work shall not excuse performance of any  
7 activities required under this Consent Decree.

8  
9 XV. CERTIFICATION OF COMPLETION

10 47. Completion of the Remedial Action

11 a. Within ninety (90) days after Settling Defendants  
12 conclude that the Remedial Action has been fully performed and  
13 the Performance Standards have been attained and maintained in  
14 accordance with the Scope of Work, Settling Defendants shall  
15 schedule and conduct a pre-certification inspection to be  
16 attended by Settling Defendants, EPA, and the State. If, after  
17 the pre-certification inspection, the Settling Defendants still  
18 believe that the Remedial Action has been fully performed and the  
19 Performance Standards have been attained, they shall submit a  
20 written report requesting certification to EPA for approval, with  
21 a copy to the State, pursuant to Section XII (Submissions  
22 Requiring Agency Approval) within thirty (30) days of the  
23 inspection. In the report, a registered professional engineer  
24 and the Settling Defendants' Project Coordinator shall state that  
25 the Remedial Action has been completed in full satisfaction of  
26 the requirements of this Consent Decree. The written report  
27 shall include as-built drawings signed and stamped by a

1 professional engineer. The report shall contain the following  
2 statement, signed by a responsible corporate official of a  
3 Settling Defendant or the Settling Defendants' Project  
4 Coordinator:

5 "To the best of my knowledge, after thorough investigation,  
6 I certify that the information contained in or accompanying  
7 this submission is true, accurate and complete. I am aware  
8 that there are significant penalties for submitting false  
9 information, including the possibility of fine and  
10 imprisonment for knowing violations."

11 If, after completion of the pre-certification inspection and  
12 receipt and review of the written report, EPA, after reasonable  
13 opportunity to review and comment by the State, determines that  
14 the Remedial Action or any portion thereof has not been completed  
15 in accordance with this Consent Decree or that the Performance  
16 Standards have not been achieved, EPA will notify Settling  
17 Defendants in writing of the activities that must be undertaken  
18 to complete the Remedial Action and achieve the Performance  
19 Standards. EPA will set forth in the notice a schedule for  
20 performance of such activities consistent with the Consent Decree  
21 and the SOW or require the Settling Defendants to submit a  
22 schedule to EPA for approval pursuant to Section XII (Submissions  
23 Requiring Agency Approval). Settling Defendants shall perform  
24 all activities described in the notice in accordance with the  
25 specifications and schedules established pursuant to this  
26 Paragraph, subject to their right to invoke the dispute  
27 resolution procedures set forth in Section XX (Dispute  
28 Resolution).

1           b. If EPA concludes, based on the initial or any  
2 subsequent report requesting Certification of Completion and  
3 after a reasonable opportunity for review and comment by the  
4 State, that the Remedial Action has been fully performed in  
5 accordance with this Consent Decree and that the Performance  
6 Standards have been achieved, EPA will so certify in writing to  
7 Settling Defendants. This certification shall constitute the  
8 Certification of Completion of the Remedial Action for purposes  
9 of this Consent Decree, including, but not limited to, Section  
10 XXII (Covenants Not to Sue by Plaintiffs). Certification of  
11 Completion of the Remedial Action shall not affect Settling  
12 Defendants' obligations under this Consent Decree.

13           48. Completion of the Work

14           a. Within ninety (90) days after Settling Defendants  
15 conclude that all phases of the Work (including O & M), have been  
16 fully performed, Settling Defendants shall schedule and conduct a  
17 pre-certification inspection to be attended by Settling  
18 Defendants, EPA, and the State. If, after the pre-certification  
19 inspection, the Settling Defendants still believe that the Work  
20 has been fully performed, Settling Defendants shall submit a  
21 written report by a registered professional engineer stating that  
22 the Work has been completed in full satisfaction of the  
23 requirements of this Consent Decree. The report shall contain  
24 the following statement, signed by a responsible corporate  
25 official of a Settling Defendant or the Settling Defendants'  
26 Project Coordinator:

1 "To the best of my knowledge, after thorough investigation,  
2 I certify that the information contained in or accompanying  
3 this submission is true, accurate and complete. I am aware  
4 that there are significant penalties for submitting false  
5 information, including the possibility of fine and  
6 imprisonment for knowing violations."

7 If, after review of the written report, EPA, after reasonable  
8 opportunity to review and comment by the State, determines that  
9 any portion of the Work has not been completed in accordance with  
10 this Consent Decree, EPA will notify Settling Defendants in  
11 writing of the activities that must be undertaken to complete the  
12 Work. EPA will set forth in the notice a schedule for  
13 performance of such activities consistent with the Consent Decree  
14 and the SOW or require the Settling Defendants to submit a  
15 schedule to EPA for approval pursuant to Section XII (Submissions  
16 Requiring Agency Approval). Settling Defendants shall perform  
17 all activities described in the notice in accordance with the  
18 specifications and schedules established therein, subject to  
19 their right to invoke the dispute resolution procedures set forth  
20 in Section XX (Dispute Resolution).

21 b. If EPA concludes, based on the initial or any  
22 subsequent request for Certification of Completion by Settling  
23 Defendants and after a reasonable opportunity for review and  
24 comment by the State, that the Work has been fully performed in  
25 accordance with this Consent Decree, EPA will so notify the  
26 Settling Defendants in writing.

#### 27 XVI. EMERGENCY RESPONSE

28 49. In the event of any action or occurrence during the  
performance of the Work which causes or threatens a release of

1 Waste Material at or from the Site that constitutes an emergency  
2 situation or may present an immediate threat to public health or  
3 welfare or the environment, Settling Defendants shall, subject to  
4 Paragraph 50, immediately take all appropriate action to prevent,  
5 abate, or minimize such release or threat of release, and shall  
6 immediately notify the EPA's Project Coordinator, or, if the  
7 Project Coordinator is unavailable, EPA's Alternate Project  
8 Coordinator. If neither of these persons is available, the  
9 Settling Defendants shall notify the EPA Emergency Response Unit,  
10 Region 10. Settling Defendants shall take such actions in  
11 consultation with EPA's Project Coordinator or other available  
12 authorized EPA officer and in accordance with all applicable  
13 provisions of the Health and Safety Plans, the Contingency Plans,  
14 and any other applicable plans or documents developed pursuant to  
15 the SOW. In the event that Settling Defendants fail to take  
16 appropriate response action as required by this Section, and EPA  
17 or, as appropriate, the State take such action instead, Settling  
18 Defendants shall reimburse EPA and the State all costs of the  
19 response action not inconsistent with the NCP pursuant to Section  
20 XVII (Reimbursement of Response Costs).

21         50. Nothing in the preceding Paragraph or in this  
22 Consent Decree shall be deemed to limit any authority of the  
23 United States, or the State, to take, direct, or order all  
24 appropriate action or to seek an order from the Court to protect  
25 human health and the environment or to prevent, abate, respond  
26 to, or minimize an actual or threatened release of Waste Material  
27 on, at, or from the Site.

1                   XVII. REIMBURSEMENT OF RESPONSE COSTS

2           51. Within thirty (30) days of the effective date of  
3 this Consent Decree, Settling Defendants shall:

4           a. Pay to the United States \$16,924,986.32, in  
5 reimbursement of Past Response Costs, by Electronic Funds  
6 Transfer ("EFT" or wire transfer) to the U.S. Department of  
7 Justice lockbox bank, referencing the CERCLA Number 1020 and the  
8 U.S. A.O. file number. Payment shall be made in accordance with  
9 instructions provided by the Plaintiff to the Settling Defendants  
10 upon execution of the Consent Decree. Any EFTs received at the  
11 U.S. Department of Justice lockbox bank after 11 a.m. (easter  
12 Time) will be credited on the next business day.

13           52. Settling Defendants shall reimburse the United  
14 States and the State for all Future Response Costs not  
15 inconsistent with the NCP incurred by the United States and the  
16 State. The United States and the State will each send Settling  
17 Defendants a bill requiring payment that includes a Superfund  
18 Cost Organization Recovery Enhancement System Report on a  
19 periodic basis. Settling Defendants shall make all payments  
20 within thirty (30) days of Settling Defendants' receipt of each  
21 bill requiring payment, except as otherwise provided in Paragraph

22   53. The Settling Defendants shall make all payments required by  
23 this Paragraph in the form of a certified check or checks made  
24 payable to:

25                   U.S. Environmental Protection Agency  
26                   EPA Hazardous Substance Superfund  
27                   P.O. Box 360903M  
                    Pittsburgh, Pennsylvania 15251

1 and referencing CERCLA Number 1020.

2       53. Settling Defendants may contest payment of any  
3 Future Response Costs under Paragraph 52 if they determine that  
4 the United States or the State has made an accounting error or if  
5 they allege that a cost item that is included represents costs  
6 that are inconsistent with the NCP. Such objection shall be  
7 made, in writing, within thirty (30) days of receipt of the bill  
8 and must be sent to the United States (if the United States'  
9 accounting is being disputed) or the State (if the State's  
10 accounting is being disputed) pursuant to Section XXVII (Notices  
11 and Submissions). Any such objection shall specifically identify  
12 the contested Future Response Costs and the basis for objection.  
13 In the event of an objection, the Settling Defendants shall  
14 within the thirty (30) day period pay all uncontested Future  
15 Response Costs to the United States or the State in the manner  
16 described in Paragraph 52. Simultaneously, the Settling  
17 Defendants shall establish an interest bearing escrow account in  
18 a federally-insured bank duly chartered in the State of Idaho and  
19 remit to that escrow account funds equivalent to the amount of  
20 the contested Future Response Costs. The Settling Defendants  
21 shall send to the United States, as provided in Section XXVII  
22 (Notices and Submissions), and the State, a copy of the  
23 transmittal letter and check paying the uncontested Future  
24 Response Costs, and a copy of the correspondence that establishes  
25 and funds the escrow account, including, but not limited to,  
26 information containing the identity of the bank and bank account  
27 under which the escrow account is established as well as a bank



1 statement showing the initial balance of the escrow account.  
2 Simultaneously with establishment of the escrow account, the  
3 Settling Defendants shall initiate the Dispute Resolution  
4 procedures in Section XX (Dispute Resolution). If the United  
5 States or the State prevails in the dispute, within five (5) days  
6 of the resolution of the dispute, the Settling Defendants shall  
7 pay the sums due (with accrued interest) to the United States or  
8 the State (if State costs are disputed), in the manner described  
9 in Paragraph 52. If the Settling Defendants prevail concerning  
10 any aspect of the contested costs, the Settling Defendants shall  
11 pay that portion of the costs (plus associated accrued interest)  
12 for which they did not prevail to the United States or the State  
13 (if State costs are disputed) in the manner described in  
14 Paragraph 52; Settling Defendants shall be disbursed any balance  
15 of the escrow account. The dispute resolution procedures set  
16 forth in this Paragraph in conjunction with the procedures set  
17 forth in Section XX (Dispute Resolution) shall be the exclusive  
18 mechanisms for resolving disputes regarding the Settling  
19 Defendants' obligation to reimburse the United States and the  
20 State for their Future Response Costs.

21 54. In the event that the payments required by Paragraph  
22 51 are not made within thirty (30) days of the effective date of  
23 this Consent Decree or the payments required by Paragraph 52 are  
24 not made within thirty (30) days of the Settling Defendants'  
25 receipt of the bill, Settling Defendants shall pay interest on  
26 the unpaid balance at the rate established pursuant to Section  
27 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on

1 Past Response Costs shall begin to accrue on the effective date  
2 of the Consent Decree. The interest on Future Response Costs  
3 shall begin to accrue on the date of the Settling Defendants'  
4 receipt of the bill. Interest shall accrue at the rate specified  
5 through the date of the Settling Defendant's payment. Payments  
6 of interest made under this Paragraph shall be in addition to  
7 such other remedies or sanctions available to Plaintiffs by  
8 virtue of Settling Defendants' failure to make timely payments  
9 under this Section.

10  
11 XVIII. INDEMNIFICATION AND INSURANCE

12 55. The United States and the State do not assume any  
13 liability by entering into this agreement or by virtue of any  
14 designation of Settling Defendants as EPA's authorized  
15 representatives under Section 104(e) of CERCLA,  
16 42 U.S.C. § 9604(e). Settling Defendants shall indemnify, save  
17 and hold harmless the United States, the State, and their  
18 officials, agents, employees, contractors, subcontractors, or  
19 representatives for or from any and all claims or causes of  
20 action arising from, or on account of, acts or omissions of  
21 Settling Defendants, their officers, directors, employees,  
22 agents, contractors, subcontractors, and any persons acting on  
23 their behalf or under their control, in carrying out activities  
24 pursuant to this Consent Decree, including, but not limited to,  
25 any claims arising from any designation of Settling Defendants as  
26 EPA's authorized representatives under Section 104(e) of CERCLA,  
27 42 U.S.C. § 9604(e). Further, the Settling Defendants agree to

1 pay the United States and the State all costs they incur,  
2 including, but not limited to, attorneys fees and other expenses  
3 of litigation and settlement arising from, or on account of,  
4 claims made against the United States based on acts or omissions  
5 of Settling Defendants, their officers, directors, employees,  
6 agents, contractors, subcontractors, and any persons acting on  
7 their behalf or under their control, in carrying out activities  
8 pursuant to this Consent Decree. Neither the United States nor  
9 the State shall be held out as a party to any contract entered  
10 into by or on behalf of Settling Defendants in carrying out  
11 activities pursuant to this Consent Decree. Neither the Settling  
12 Defendants nor any such contractor shall be considered an agent  
13 of the United States or the State.

14         56. Settling Defendants waive all claims against the  
15 United States and the State for damages or reimbursement or for  
16 set-off of any payments made or to be made to the United States  
17 or the State, arising from or on account of any contract,  
18 agreement, or arrangement between any one or more of Settling  
19 Defendants and any person for performance of Work on or relating  
20 to the Site, including, but not limited to, claims on account of  
21 construction delays. In addition, Settling Defendants shall  
22 indemnify and hold harmless the United States and the State with  
23 respect to any and all claims for damages or reimbursement  
24 arising from or on account of any contract, agreement, or  
25 arrangement between any one or more of Settling Defendants and  
26 any person for performance of Work on or relating to the Site,  
27

1 including, but not limited to, claims on account of construction  
2 delays.

3       57. No later than fifteen (15) days before commencing  
4 any on-Site Work, Settling Defendants shall secure, and shall  
5 maintain until the first anniversary of EPA's Certification of  
6 Completion of the Remedial Action pursuant to Paragraph 47.b. of  
7 Section XV (Certification of Completion) comprehensive general  
8 liability insurance and automobile insurance with limits of \$10  
9 million dollars, combined single limit naming as additional  
10 insured the United States and the State. In addition, for the  
11 duration of this Consent Decree, Settling Defendants shall  
12 satisfy, or shall ensure that their contractors or subcontractors  
13 satisfy, all applicable laws and regulations regarding the  
14 provision of worker's compensation insurance for all persons  
15 performing the Work on behalf of Settling Defendants in  
16 furtherance of this Consent Decree. Prior to commencement of the  
17 Work under this Consent Decree, Settling Defendants shall provide  
18 to EPA and the State certificates of such insurance and a copy of  
19 each insurance policy. Settling Defendants shall resubmit such  
20 certificates and copies of policies each year on the anniversary  
21 of the effective date of this Consent Decree. If Settling  
22 Defendants demonstrate by evidence satisfactory to EPA and the  
23 State that any contractor or subcontractor maintains insurance  
24 equivalent to that described above, or insurance covering the  
25 same risks but in a lesser amount, then, with respect to that  
26 contractor or subcontractor, Settling Defendants need provide  
27

1 only that portion of the insurance described above which is not  
2 maintained by the contractor or subcontractor.

4 XIX. FORCE MAJEURE

5 58. "Force Majeure", for purposes of this Consent  
6 Decree, is defined as any event arising from causes beyond the  
7 control of the Settling Defendants or of any entity controlled by  
8 Settling Defendants, including, but not limited to, their  
9 contractors and subcontractors, that delays or prevents the  
10 performance of any obligation under this Consent Decree despite  
11 Settling Defendants' best efforts to fulfill the obligation. The  
12 requirement that the Settling Defendants exercise "best efforts  
13 to fulfill the obligation" includes using best efforts to  
14 anticipate any potential Force Majeure event and best efforts to  
15 address the effects of any potential Force Majeure event (1) as  
16 it is occurring and (2) following the potential Force Majeure  
17 event, such that the delay is minimized to the greatest extent  
18 possible. "Force Majeure" does not include financial inability  
19 to complete the Work or a failure to attain the Performance  
20 Standards.

21 59. If any event occurs or has occurred that may delay  
22 the performance of any obligation under this Consent Decree,  
23 whether or not caused by a Force Majeure event, the Settling  
24 Defendants shall notify orally EPA's Project Coordinator or, in  
25 his or her absence, EPA's Alternate Project Coordinator or, in  
26 the event both of EPA's designated representatives are  
27 unavailable, the Director of the Hazardous Waste Management

1 Division, EPA Region 10, within forty-eight (48) hours of when  
2 Settling Defendants first knew or should have known that the  
3 event might cause a delay. Within five (5) days thereafter,  
4 Settling Defendants shall provide in writing to EPA and the State  
5 an explanation and description of the reasons for the delay; the  
6 anticipated duration of the delay; all actions taken or to be  
7 taken to prevent or minimize the delay; a schedule for  
8 implementation of any measures to be taken to prevent or mitigate  
9 the delay or the effect of the delay; the Settling Defendants'  
10 rationale for attributing such delay to a Force Majeure event if  
11 they intend to assert such a claim; and a statement as to  
12 whether, in the opinion of the Settling Defendants, such event  
13 may cause or contribute to an endangerment to public health,  
14 welfare or the environment. The Settling Defendants shall  
15 include with any notice all available documentation supporting  
16 their claim that the delay was attributable to a Force Majeure.  
17 Failure to comply with the above requirements shall preclude  
18 Settling Defendants from asserting any claim of Force Majeure for  
19 that event. Settling Defendants shall be deemed to have notice  
20 of any circumstance of which their contractors or subcontractors  
21 had or should have had notice.

22 60. If EPA, after a reasonable opportunity for review  
23 and comment by the State, agrees that the delay or anticipated  
24 delay is attributable to a Force Majeure event, the time for  
25 performance of the obligations under this Consent Decree that are  
26 affected by the Force Majeure event will be extended by EPA,  
27 after a reasonable opportunity for review and comment by the

1 State, for such time as is necessary to complete those  
2 obligations. An extension of the time for performance of the  
3 obligations affected by the Force Majeure event shall not, of  
4 itself, extend the time for performance of any other obligation.  
5 If EPA, after a reasonable opportunity for review and comment by  
6 the State, does not agree that the delay or anticipated delay has  
7 been or will be caused by a Force Majeure event, EPA will notify  
8 the Settling Defendants in writing of its decision. If EPA,  
9 after a reasonable opportunity for review and comment by the  
10 State, agrees that the delay is attributable to a Force Majeure  
11 event, EPA will notify the Settling Defendants in writing of the  
12 length of the extension, if any, for performance of the  
13 obligations affected by the Force Majeure event.

14           61. If the Settling Defendants elect to invoke the  
15 dispute resolution procedures set forth in Section XX (Dispute  
16 Resolution), they shall do so no later than fifteen (15) days  
17 after receipt of EPA's notice. In any such proceeding, Settling  
18 Defendants shall have the burden of demonstrating by a  
19 preponderance of the evidence that the delay or anticipated delay  
20 has been or will be caused by a Force Majeure event, that the  
21 duration of the delay or the extension sought was or will be  
22 warranted under the circumstances, that best efforts were  
23 exercised to avoid and mitigate the effects of the delay, and  
24 that Settling Defendants complied with the requirements of  
25 Paragraphs 58 and 59, above. If Settling Defendants carry this  
26 burden, the delay at issue shall be deemed not to be a violation  
27

1 by Settling Defendants of the affected obligation of this Consent  
2 Decree identified to EPA and the Court.

3  
4 XX. DISPUTE RESOLUTION

5 62. Unless otherwise expressly provided for in this  
6 Consent Decree, the dispute resolution procedures of this Section  
7 shall be the exclusive mechanism to resolve disputes arising  
8 under or with respect to this Consent Decree. However, the  
9 procedures set forth in this Section shall not apply to actions  
10 by the United States to enforce obligations of the Settling  
11 Defendants that have not been disputed in accordance with this  
12 Section.

13 63. Any dispute which arises under or with respect to  
14 this Consent Decree shall in the first instance be the subject of  
15 informal negotiations between the parties to the dispute. The  
16 period for informal negotiations shall not exceed twenty (20)  
17 days from the time the dispute arises, unless it is modified by  
18 written agreement of the parties to the dispute. The dispute  
19 shall be considered to have arisen when one party sends the other  
20 parties a written Notice of Dispute.

21 64. a. In the event that the parties cannot resolve a  
22 dispute by informal negotiations under the preceding Paragraph,  
23 then the position advanced by EPA shall be considered binding  
24 unless, within ten (10) days after the conclusion of the informal  
25 negotiation period, Settling Defendants invoke the formal dispute  
26 resolution procedures of this Section by serving on the United  
27 States and the State a written Statement of Position on the



1 matter in dispute, including, but not limited to, any factual  
2 data, analysis or opinion supporting that position and any  
3 supporting documentation relied upon by the Settling Defendants.  
4 The Statement of Position shall specify the Settling Defendants'  
5 position as to whether formal dispute resolution should proceed  
6 under Paragraph 65 or 66.

7           b. Within fourteen (14) days after receipt of  
8 Settling Defendants' Statement of Position, EPA will serve on  
9 Settling Defendants its Statement of Position, including, but not  
10 limited to, any factual data, analysis, or opinion supporting  
11 that position and all supporting documentation relied upon by  
12 EPA. EPA's Statement of Position shall include a statement as to  
13 whether formal dispute resolution should proceed under Paragraph  
14 65 or 66.

15           c. If there is disagreement between EPA and the  
16 Settling Defendants as to whether dispute resolution should  
17 proceed under Paragraph 65 or 66, the parties to the dispute  
18 shall follow the procedures set forth in the paragraph determined  
19 by EPA to be applicable. However, if the Settling Defendants  
20 ultimately appeal to the court to resolve the dispute, the Court  
21 shall determine which paragraph is applicable in accordance with  
22 the standards of applicability set forth in Paragraphs 65 and 66.

23           65. Formal dispute resolution for disputes pertaining to  
24 the selection or adequacy of any response action and all other  
25 disputes that are accorded review on the administrative record  
26 under applicable principles of administrative law shall be  
27 conducted pursuant to the procedures set forth in this Paragraph.

1 For purposes of this Paragraph, the adequacy of any response  
2 action includes, without limitation: (1) the adequacy or  
3 appropriateness of plans, procedures to implement plans, or any  
4 other items requiring approval by EPA under this Consent Decree;  
5 and (2) the adequacy of the performance of response actions taken  
6 pursuant to this Consent Decree. Nothing in this Consent Decree  
7 shall be construed to allow any dispute by Settling Defendants  
8 regarding the validity of the RODs provisions.

9           a. An administrative record of the dispute shall be  
10 maintained by EPA and shall contain all statements of position,  
11 including supporting documentation, submitted pursuant to this  
12 Paragraph. Where appropriate, EPA may allow submission of  
13 supplemental statements of position by the parties to the  
14 dispute.

15           b. The Director of the Waste Management Division,  
16 EPA Region 10, will issue a final administrative decision  
17 resolving the dispute based on the administrative record  
18 described in Paragraph 65.a. This decision shall be binding upon  
19 the Settling Defendants, subject only to the right to seek  
20 judicial review pursuant to Paragraph 65.c. and d.

21           c. Any administrative decision made by EPA pursuant  
22 to Paragraph 65.b. shall be reviewable by this Court, provided  
23 that a notice of judicial appeal is filed by the Settling  
24 Defendants with the Court and served on all Parties within ten  
25 (10) days of receipt of EPA's decision. The notice of judicial  
26 appeal shall include a description of the matter in dispute, the  
27 efforts made by the parties to resolve it, the relief requested,

1 and the schedule, if any, within which the dispute must be  
2 resolved to ensure orderly implementation of this Consent Decree.  
3 The United States may file a response to Settling Defendants'  
4 notice of judicial appeal.

5 d. In proceedings on any dispute governed by this  
6 Paragraph, Settling Defendants shall have the burden of  
7 demonstrating that the decision of the Waste Management Division  
8 Director is arbitrary and capricious or otherwise not in  
9 accordance with law. Judicial review of EPA's decision shall be  
10 on the administrative record compiled pursuant to Paragraphs  
11 65.a.

12 66. Formal dispute resolution for disputes that neither  
13 pertain to the selection or adequacy of any response action nor  
14 are otherwise accorded review on the administrative record under  
15 applicable principles of administrative law, shall be governed by  
16 this Paragraph.

17 a. Following receipt of Settling Defendants'  
18 Statement of Position submitted pursuant to Paragraph 64, the  
19 Director of the Waste Management Division, EPA Region 10, will  
20 issue a final decision resolving the dispute. The Waste  
21 Management Division Director's decision shall be binding on the  
22 Settling Defendants unless, within ten (10) days of receipt of  
23 the decision, the Settling Defendants file with the Court and  
24 serve on the parties a notice of judicial appeal setting forth  
25 the matter in dispute, the efforts made by the parties to resolve  
26 it, the relief requested, and the schedule, if any, within which  
27 the dispute must be resolved to ensure orderly implementation of

1 the Consent Decree. The United States may file a response to  
2 Settling Defendants' notice of judicial appeal.

3           b. Notwithstanding Paragraph P of Section I  
4 (Background) of this Consent Decree, judicial review of any  
5 dispute governed by this Paragraph shall be governed by  
6 applicable provisions of law.

7           67. The invocation of formal dispute resolution  
8 procedures under this Section shall not extend, postpone or  
9 affect in any way any obligation of the Settling Defendants under  
10 this Consent Decree not directly in dispute, unless EPA or the  
11 Court agrees otherwise. Stipulated penalties with respect to the  
12 disputed matter shall continue to accrue but payment shall be  
13 stayed pending resolution of the dispute as provided in  
14 Paragraph 76. Notwithstanding the stay of payment, stipulated  
15 penalties shall accrue from the first day of noncompliance with  
16 any applicable provision of this Consent Decree. In the event  
17 that the Settling Defendant does not prevail on the disputed  
18 issue, stipulated penalties shall be assessed and paid as  
19 provided in Section XXI (Stipulated Penalties).

20  
21                           XXI. STIPULATED PENALTIES

22           68. Settling Defendants shall be liable for stipulated  
23 penalties in the amounts set forth in Paragraphs 69 and 70 to the  
24 United States and the State for failure to comply with the  
25 requirements of this Consent Decree specified below, unless  
26 excused under Section XIX (Force Majeure). "Compliance" by  
27 Settling Defendants shall include completion of the activities

1 under this Consent Decree or any work plan or other plan approved  
2 under this Consent Decree identified below in accordance with all  
3 applicable requirements of law, this Consent Decree, the SOW, and  
4 any plans or other documents approved by EPA pursuant to this  
5 Consent Decree and within the specified time schedules  
6 established by and approved under this Consent Decree.

7 69. a. The following stipulated penalties shall be  
8 payable per violation per day to the United States and the State  
9 for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 5,000	1st through 14th day
\$15,000	15th through 30th day
\$30,000	31st day and beyond

10 b. Activity/Milestone or Completion Date

- 11 • Remedial Design Work Plan and components  
12 thereof as required by SOW.
- 13 • Final Design as required by SOW.
- 14 • Remedial Action Work Plan and components  
15 thereof as required by SOW.
- 16 • Initiation of Remedial Action activities in  
17 accordance with SOW and Work Plan(s).
- 18 • Construction Completion Report.

19 70. For all other deliverables or tasks required by this  
20 Consent Decree, the SOW, or any approved plans or reports,  
21 stipulated penalties shall accrue in the amount of Five Hundred  
22 Dollars (\$500.00) per day, per violation, for the first seven (7)  
23 days of noncompliance; One Thousand Dollars (\$1,000.00) for the  
24 eighth (8th) through the fourteenth (14th) day of noncompliance;  
25

1 and Five Thousand Dollars (5,000.00) per day, per violation,  
2 thereafter.

3 71. In the event that EPA assumes performance of a  
4 portion or all of the Work pursuant to Paragraph 84 of Section  
5 XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants  
6 shall be liable for a stipulated penalty in the amount of  
7 three (3) times the cost incurred by EPA or the State to perform  
8 the Work.

9 72. All penalties shall begin to accrue on the day after  
10 the complete performance is due or the day a violation occurs,  
11 and shall continue to accrue through the final day of the  
12 correction of the noncompliance or completion of the activity.  
13 Nothing herein shall prevent the simultaneous accrual of separate  
14 penalties for separate violations of this Consent Decree.

15 73. Following EPA's determination that Settling  
16 Defendants have failed to comply with a requirement of this  
17 Consent Decree, EPA may give Settling Defendants written  
18 notification of the same and describe the noncompliance. EPA and  
19 the State may send the Settling Defendants a written demand for  
20 the payment of the penalties. However, penalties shall accrue as  
21 provided in the preceding Paragraph regardless of whether EPA has  
22 notified the Settling Defendants of a violation.

23 74. All penalties owed to the United States and the  
24 State under this section shall be due and payable within  
25 thirty (30) days of the Settling Defendants' receipt from EPA of  
26 a demand for payment of the penalties, unless Settling Defendants  
27 invoke the Dispute Resolution procedures under Section XX

(Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to US Environmental Protection Agency, EPA Hazardous Substance Superfund, P.O. Box 360903M, Pittsburgh, PA 15251 and shall reference CERCLA ID Number 1020. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the State within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties

1 determined by the District Court to be owing to the United States  
2 or the State into an interest-bearing escrow account within  
3 sixty (60) days of receipt of the Court's decision or order.  
4 Penalties shall be paid into this account as they continue to  
5 accrue, at least every sixty (60) days. Within fifteen (15) days  
6 of receipt of the final appellate court decision, the escrow  
7 agent shall pay the balance of the account to EPA and the State  
8 or to Settling Defendants to the extent that they prevail.

9         77. a. If Settling Defendants fail to pay stipulated  
10 penalties when due, the United States or the State may institute  
11 proceedings to collect the penalties, as well as interest.  
12 Settling Defendants shall pay interest on the unpaid balance,  
13 which shall begin to accrue on the date of demand made pursuant  
14 to Paragraph 74 at the rate established pursuant to Section  
15 107(a) of CERCLA, 42 U.S.C. § 9607.

16         b. Nothing in this Consent Decree shall be  
17 construed as prohibiting, altering, or in any way limiting the  
18 ability of the United States or the State to seek any other  
19 remedies or sanctions available by virtue of Settling Defendants'  
20 violation of this Decree or of the statutes and regulations upon  
21 which it is based, including, but not limited to, penalties  
22 pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

23         78. No payments made under this Section shall be tax  
24 deductible for Federal or State tax purposes.



1                   XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

2                   79. In consideration of the actions that will be  
3 performed and the payments that will be made by the Settling  
4 Defendants under the terms of the Consent Decree, and except as  
5 specifically provided in Paragraphs 80, 81, and 83 of this  
6 Section, the United States covenants not to sue or to take  
7 administrative action against Settling Defendants pursuant to  
8 Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a),  
9 relating to the Site. Except with respect to future liability,  
10 these covenants not to sue shall take effect upon the receipt by  
11 EPA of the payments required by Paragraph 51 of Section XVII  
12 (Reimbursement of Response Costs). With respect to future  
13 liability, these covenants not to sue shall take effect upon  
14 Certification of Completion of Remedial Action by EPA pursuant to  
15 Paragraph 47.b of Section XV (Certification of Completion).  
16 These covenants not to sue are conditioned upon the complete and  
17 satisfactory performance by Settling Defendants of their  
18 obligations under this Consent Decree. These covenants not to  
19 sue extend only to the Settling Defendants and do not extend to  
20 any other person.

21                   80. United States' Pre-certification reservations.

22 Notwithstanding any other provision of this Consent Decree, the  
23 United States reserves, and this Consent Decree is without  
24 prejudice to, the right to institute proceedings in this action  
25 or in a new action, or to issue an administrative order seeking  
26 to compel Settling Defendants (1) to perform further response  
27 actions relating to the Site or (2) to reimburse the United

1 States for additional costs of response if, prior to  
2 certification of completion of the Remedial Action:

3 (i) conditions at the Site, previously unknown to EPA,  
4 are discovered, or

5 (ii) information, previously unknown to EPA, is received,  
6 in whole or in part,

7 and these previously unknown conditions or information together  
8 with any other relevant information indicates that the Remedial  
9 Action is not protective of human health or the environment.

10 81. United States' Post-certification reservations.

11 Notwithstanding any other provision of this Consent Decree, the  
12 United States reserves, and this Consent Decree is without  
13 prejudice to, the right to institute proceedings in this action  
14 or in a new action, or to issue an administrative order seeking  
15 to compel Settling Defendants (1) to perform further response  
16 actions relating to the Site or (2) to reimburse the United  
17 States for additional costs of response if, subsequent to  
18 certification of completion of the Remedial Action:

19 (i) conditions at the Site, previously unknown to EPA,  
20 are discovered, or

21 (ii) information, previously unknown to EPA, is received,  
22 in whole or in part,

23 and these previously unknown conditions or this information  
24 together with other relevant information indicate that the  
25 Remedial Action is not protective of human health or the  
26 environment.

27 82. For purposes of Paragraph 80, the information and  
28 the conditions known to EPA shall include only that information  
and those conditions set forth in the Records of Decision for the

1 Site and the administrative record supporting the Records of  
2 Decision. For purposes of Paragraph 81, the information and the  
3 conditions known to EPA shall include only that information and  
4 those conditions set forth in the Records of Decision, the  
5 administrative record supporting the Records of Decision, and any  
6 information received by EPA pursuant to the requirements of this  
7 Consent Decree prior to Certification of Completion of the  
8 Remedial Action.

9 83. General reservations of rights. The covenants not  
10 to sue set forth above do not pertain to any matters other than  
11 those expressly specified in Paragraph 79. The United States and  
12 the State reserves, and this Consent Decree is without prejudice  
13 to, all rights against Settling Defendants with respect to all  
14 other matters, including but not limited to, the following:

- 15 (1) claims based on a failure by Settling Defendants  
16 to meet a requirement of this Consent Decree;
- 17 (2) liability arising from the past, present, or future  
18 disposal, release, or threat of release of Waste  
19 Materials outside of the Site;
- 20 (3) liability for damages for injury to, destruction  
21 of, or loss of natural resources;
- 22 (4) liability for response costs that have been or may  
23 be incurred by any natural resource trustee,  
24 including the Coeur d'Alene Tribe, the United States  
25 Department of the Interior, or the United States  
26 Department of Agriculture, as well as the United  
27 States Department of Justice in connection with its  
28 representation of DOI and DOA;
- (5) criminal liability;
- (6) liability for violations of federal or state law  
which occur during or after implementation of the  
Remedial Action;
- (7) liability for response action outside of the Site;

1 (8) liability for costs that the United States will  
2 incur related to the Site but are not within the  
definition of Future Response Costs; and

3 (9) liability for costs and response actions in  
4 connection with the Coeur d'Alene Basin Project.

5 84. In the event EPA determines that Settling Defendants  
6 have failed to implement any provisions of the Work in an  
7 adequate or timely manner, EPA may perform any and all portions  
8 of the Work as EPA determines necessary. Settling Defendants may  
9 invoke the procedures set forth in Section XX (Dispute  
10 Resolution) to dispute EPA's determination that the Settling  
11 Defendants failed to implement a provision of the Work in an  
12 adequate or timely manner as arbitrary and capricious or  
13 otherwise not in accordance with law. Such dispute shall be  
14 resolved on the administrative record. Costs incurred by the  
15 United States in performing the Work pursuant to this Paragraph  
16 shall be considered Future Response Costs that Settling  
17 Defendants shall pay pursuant to Section XVII (Reimbursement of  
18 Response Costs).

19 85. Notwithstanding any other provision of this Consent  
20 Decree, the United States and the State retain all authority and  
21 reserve all rights to take any and all response actions  
22 authorized by law.

23 [Insert the State's Covenant not to Sue the Settling Defendants  
24 and reservation of rights.]

25 XXIII. COVENANTS BY SETTLING DEFENDANTS

26 86. Settling Defendants hereby covenant not to sue and  
27 agree not to assert any claims or causes of action against the

1 United States or the State with respect to the Site or this  
2 Consent Decree, including, but not limited to, any direct or  
3 indirect claim for reimbursement from the Hazardous Substance  
4 Superfund (established pursuant to the Internal Revenue Code,  
5 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112,  
6 113, 42 U.S.C. §§ 9606(B)(2), 9611, 96122, 9613 or any other  
7 provision of law, or any claims arising out of response  
8 activities at the Site. However, the Settling Defendants  
9 reserve, and this Consent Decree is without prejudice to, actions  
10 against the United States based on negligent actions taken  
11 directly by the United States (not including oversight or  
12 approval of the Settling Defendants plans or activities) that are  
13 brought pursuant to any statute other than CERCLA and for which  
14 the waiver of sovereign immunity is found in a statute other than  
15 CERCLA. Nothing in this Consent Decree shall be deemed to  
16 constitute preauthorization of a claim within the meaning of  
17 Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
18 § 300.700(d).

19  
20 **XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

21 87. Nothing in this Consent Decree shall be construed to  
22 create any rights in, or grant any cause of action to, any person  
23 not a party to this Consent Decree. The preceding sentence shall  
24 not be construed to waive or nullify any rights that any person  
25 not a signatory to this decree may have under applicable law.  
26 Each of the Parties expressly reserves any and all rights  
27 (including, but not limited to, any right to contribution),

1 defenses, claims, demands, and causes of action which each party  
2 may have with respect to any matter, transaction, or occurrence  
3 relating in any way to the Site against any person not a party  
4 hereto.

5 88. With regard to claims for contribution against  
6 Settling Defendants for matters addressed in this Consent Decree,  
7 the Parties hereto agree that the Settling Defendants are  
8 entitled to such protection from contribution actions or claims  
9 as is provided by CERCLA Section 113(f)(2), 42 U.S.C.  
10 § 9613(f)(2).

11 89. The Settling Defendants agree that with respect to  
12 any suit or claim for contribution brought by them for matters  
13 related to this Consent Decree they will notify the United States  
14 and the State, in writing, no later than sixty (60) days prior to  
15 the initiation of such suit or claim.

16 90. The Settling Defendants also agree that with respect  
17 to any suit or claim for contribution brought against them for  
18 matters related to this Consent Decree they will notify, in  
19 writing, the United States and the State within ten (10) days of  
20 service of the complaint on them. In addition, Settling  
21 Defendants shall notify the United States and the State within  
22 ten (10) days of service or receipt of any Motion for Summary  
23 Judgment and within ten (10) days of receipt of any order from a  
24 court setting a case for trial.

25 91. In any subsequent administrative or judicial  
26 proceeding initiated by the United States or the State for  
27 injunctive relief, recovery of response costs, or other

1 appropriate relief relating to the Site, Settling Defendants  
2 shall not assert, and may not maintain, any defense or claim  
3 based upon the principles of waiver, res judicata, collateral  
4 estoppel, issue preclusion, claim-splitting, or other defenses  
5 based upon any contention that the claims raised by the United  
6 States or the State in the subsequent proceeding were or should  
7 have been brought in the instant case; provided, however, that  
8 nothing in this paragraph affects the enforceability of the  
9 covenants not to sue set forth in Section XXII (Covenants Not to  
10 Sue by Plaintiffs).

11  
12 XXV. ACCESS TO INFORMATION

13 92. Settling Defendants shall provide to EPA and the  
14 State, upon request, copies of all documents and information  
15 within their possession or control or that of their contractors  
16 or agents relating to activities at the Site or to the  
17 implementation of this Consent Decree, including, but not limited  
18 to, sampling, analysis, chain of custody records, manifests,  
19 trucking logs, receipts, reports, sample traffic routing,  
20 correspondence, or other documents or information related to the  
21 Work. Settling Defendants shall also make available to EPA and  
22 the State, for purposes of investigation, information gathering,  
23 or testimony, their employees, agents, or representatives with  
24 knowledge of relevant facts concerning the performance of the  
25 Work.

26 93. a. Settling Defendants may assert business  
27 confidentiality claims covering part or all of the documents or

1 information submitted to Plaintiffs under this Consent Decree to  
2 the extent permitted by and in accordance with Section 104(e)(7)  
3 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).

4 Documents or information determined to be confidential by EPA  
5 will be afforded the protection specified in 40 C.F.R. Part 2,  
6 Subpart B. If no claim of confidentiality accompanies documents  
7 or information when they are submitted to EPA and the State, or  
8 if EPA has notified Settling Defendants that the documents or  
9 information are not confidential under the standards of Section  
10 104(e)(7) of CERCLA, 42 U.S.C. § 9607(e)(7) the public may be  
11 given access to such documents or information without further  
12 notice to Settling Defendants.

13           b. The Settling Defendants may assert that certain  
14 documents, records and other information are privileged under the  
15 attorney-client privilege or any other privilege recognized by  
16 federal law. If the Settling Defendants assert such a privilege  
17 in lieu of providing documents, they shall provide the Plaintiffs  
18 with the following: (1) the title of the document, record, or  
19 information; (2) the date of the document, record, or  
20 information; (3) the name and title of the author of the  
21 document, record, or information; (4) the name and title of each  
22 addressee and recipient; (5) a description of the contents of the  
23 document, record, or information; and (6) the privilege asserted  
24 by Settling Defendants. However, no documents, reports, or other  
25 information created or generated pursuant to the requirements of  
26 the Consent Decree shall be withheld on the grounds that they are  
27 privileged.



1           94. No claim of confidentiality shall be made with  
2 respect to any data, including, but not limited to, all sampling,  
3 analytical, monitoring, hydrogeologic, scientific, chemical, or  
4 engineering data, or any other documents or information  
5 evidencing conditions at or around the Site.

6  
7                           XXVI. RETENTION OF RECORDS

8           95. Until ten (10) years after the Settling Defendants'  
9 receipt of EPA's notification pursuant to Paragraph 48.b of  
10 Section XV (Certification of Completion of the Work), each  
11 Settling Defendant shall preserve and retain all records and  
12 documents now in its possession or control or which come into its  
13 possession or control that relate in any manner to the  
14 performance of the Work or liability of any person for response  
15 actions conducted and to be conducted at the Site, regardless of  
16 any corporate retention policy to the contrary. Until ten (10)  
17 years after the Settling Defendants' receipt of EPA's  
18 notification pursuant to Paragraph 48.b of Section XV  
19 (Certification of Completion), Settling Defendants shall also  
20 instruct their contractors and agents to preserve all documents,  
21 records, and information of whatever kind, nature or description  
22 relating to the performance of the Work.

23           96. At the conclusion of this document retention period,  
24 Settling Defendants shall notify the United States and the State  
25 at least ninety (90) days prior to the destruction of any such  
26 records or documents, and, upon request by the United States or  
27 the State, Settling Defendants shall deliver any such records or

1 documents to EPA or the State. The Settling Defendants may  
2 assert that certain documents, records and other information are  
3 privileged under the attorney-client privilege or any other  
4 privilege recognized by federal law. If the Settling Defendants  
5 assert such a privilege, they shall provide the Plaintiffs with  
6 the following: (1) the title of the document, record, or  
7 information; (2) the date of the document, record, or  
8 information; (3) the name and title of the author of the  
9 document, record, or information; (4) the name and title of each  
10 addressee and recipient; (5) a description of the subject of the  
11 document, record, or information: and (6) the privilege asserted  
12 by Settling Defendants. The Plaintiffs retain the right to  
13 challenge any such claim of privilege. No documents, reports, or  
14 other information created or generated pursuant to the  
15 requirements of the Consent Decree shall be withheld on the  
16 grounds that they are privileged.

17 97. Each Settling Defendant hereby certifies,  
18 individually, that it has not altered, mutilated, discarded,  
19 destroyed or otherwise disposed of any records, documents or  
20 other information relating to its potential liability regarding  
21 the Site since notification of potential liability by the United  
22 States or the State or the filing of suit against it regarding  
23 the Site and that it has fully complied with any and all EPA  
24 requests for information pursuant to Section 104(e) and 122(e) of  
25 CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).  
26  
27

XXVII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DJ # \_\_\_\_\_

and

Director, Waste Management Division  
United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, HW-113  
Seattle, Washington 98101

As to EPA:

[Name]  
EPA Project Coordinator

1 United States Environmental Protection Agency  
2 Region 10  
3 1200 Sixth Avenue, \_\_\_\_\_  
4 Seattle, Washington 98101

5 As to the State:

6 [Name]  
7 State Project Coordinator

8 As to the Settling Defendants:

9 [Name]  
10 Settling Defendants' Project Coordinator  
11 [Address]

12 XXVIII. EFFECTIVE DATE

13 99. The effective date of this Consent Decree shall be  
14 the date upon which this Consent Decree is entered by the Court,  
15 except as otherwise provided herein.

16  
17 XXIX. RETENTION OF JURISDICTION

18 100. This Court retains jurisdiction over both the  
19 subject matter of this Consent Decree and the Settling Defendants  
20 for the duration of the performance of the terms and provisions  
21 of this Consent Decree for the purpose of enabling any of the  
22 Parties to apply to the Court at any time for such further order,  
23 direction, and relief as may be necessary or appropriate for the  
24 construction or modification of this Consent Decree, or to  
25 effectuate or enforce compliance with its terms, or to resolve  
26 disputes in accordance with Section XX (Dispute Resolution)  
27 hereof.

1 XXX. APPENDICES

2 101. The following appendices are attached to and  
3 incorporated into this Consent Decree:

4 "Appendix A" is the RODs.

5 "Appendix B" is the SOW.

6 "Appendix C" is the description and/or map of the Site.

7 "Appendix D" is the complete list of the Settling Defendants.

8 "Appendix E" is the complete list of the Owner Settling  
9 Defendants.

10  
11 XXXI. COMMUNITY RELATIONS

12 102. Settling Defendants shall propose to EPA and the  
13 State their participation in the community relations plan to be  
14 developed by EPA. EPA will determine the appropriate role for the  
15 Settling Defendants under the Plan. Settling Defendants shall  
16 also cooperate with EPA and the State in providing information  
17 regarding the Work to the public. As requested by EPA or the  
18 State, Settling Defendants shall participate in the preparation  
19 of such information for dissemination to the public and in public  
20 meetings which may be held or sponsored by EPA or the State to  
21 explain activities at or relating to the Site.

22  
23 XXXII. MODIFICATION

24 103. Schedules specified in this Consent Decree for  
25 completion of the Work may be modified by agreement of EPA and  
26 the Settling Defendants. All such modifications shall be made in  
27 writing.

1           104. No material modifications shall be made to the SOW  
2 without written notification to and written approval of the  
3 United States, Settling Defendants, and the Court. Prior to  
4 providing its approval to any modification, the United States  
5 will provide the State with a reasonable opportunity to review  
6 and comment on the proposed modification. Modifications to the  
7 SOW that do not materially alter that document may be made by  
8 written agreement between EPA, after providing the State with a  
9 reasonable opportunity to review and comment on the proposed  
10 modification, and the Settling Defendants.

11           105. Nothing in this Decree shall be deemed to alter the  
12 Court's power to enforce, supervise or approve modifications to  
13 this Consent Decree.

14  
15           XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

16           106. This Consent Decree shall be lodged with the Court  
17 for a period of not less than thirty (30) days for public notice  
18 and comment in accordance with Section 122(d)(2) of CERCLA,  
19 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States  
20 reserves the right to withdraw or withhold its consent if the  
21 comments regarding the Consent Decree disclose facts or  
22 considerations which indicate that the Consent Decree is  
23 inappropriate, improper, or inadequate. Settling Defendants  
24 consent to the entry of this Consent Decree without further  
25 notice.

26           107. If for any reason the Court should decline to  
27 approve this Consent Decree in the form presented, this agreement

1 is voidable at the sole discretion of any party and the terms of  
2 the agreement may not be used as evidence in any litigation  
3 between the Parties.  
4

5 XXXIV. SIGNATORIES/SERVICE

6 108. Each undersigned representative of a Settling  
7 Defendant to this Consent Decree and the Assistant Attorney  
8 General for Environment and Natural Resources of the Department  
9 of Justice certifies that he or she is fully authorized to enter  
10 into the terms and conditions of this Consent Decree and to  
11 execute and legally bind such party to this document.

12 109. Each Settling Defendant hereby agrees not to oppose  
13 entry of this Consent Decree by this Court or to challenge any  
14 provision of this Consent Decree unless the United States has  
15 notified the Settling Defendants in writing that it no longer  
16 supports entry of the Consent Decree.

17 110. Each Settling Defendant shall identify, on the  
18 attached signature page, the name, address and telephone number  
19 of an agent who is authorized to accept service of process by  
20 mail on behalf of that party with respect to all matters arising  
21 under or relating to this Consent Decree. Settling Defendants  
22 hereby agree to accept service in that manner and to waive the  
23 formal service requirements set forth in Rule 4 of the Federal  
24 Rules of Civil Procedure and any applicable local rules of this  
25 Court, including, but not limited to, service of a summons.  
26  
27

1 SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_.

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4 United States District Judge  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. \_\_\_\_\_, relating to the  
3 Bunker Hill Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

5 Date: \_\_\_\_\_

6 [Name]  
7 Assistant Attorney General  
8 Environment and Natural Resources  
9 Division  
10 U.S. Department of Justice  
11 Washington, D.C. 20530

12 [Name]  
13 Environmental Enforcement Section  
14 Environment and Natural Resources  
15 Division  
16 U.S. Department of Justice  
17 Washington, D.C. 20530

18 [Name]  
19 Assistant United States Attorney  
20 District of \_\_\_\_\_  
21 U.S. Department of Justice  
22 [Address]

23 [Name]  
24 Assistant Administrator for  
25 Enforcement  
26 U.S. Environmental Protection  
27 Agency  
28 401 M Street, S.W.  
Washington, D.C. 20460

[\_\_\_\_\_]
[Name]
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

[Name]
Regional Administrator, Region 10
U.S. Environmental Protection
Agency
1200 Sixth Avenue
Seattle, Washington 98101

[Name]
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region 10
1200 Sixth Avenue, SO-155
Seattle, Washington 98101

1 United States v. \_\_\_\_\_  
2 Consent Decree Signature Page

3 FOR THE STATE OF IDAHO  
4

5 Date: \_\_\_\_\_  
6

\_\_\_\_\_  
[Name]  
[Title]  
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. \_\_\_\_\_, relating to the  
3 Bunker Hill Superfund Site.

4  
5 FOR \_\_\_\_\_ COMPANY, INC. \*/

6 Date: \_\_\_\_\_  
7 [Name -- Please Type]  
8 [Title -- Please Type]  
9 [Address -- Please Type]

10 Agent Authorized to Accept Service on Behalf of Above-signed  
11 Party:

12 Name: \_\_\_\_\_ [Please Type]  
13 Title: \_\_\_\_\_  
14 Address: \_\_\_\_\_  
15 Tel. Number: \_\_\_\_\_  
16  
17  
18  
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20  
21

22 \*/ A separate signature page must be signed by each corporation,  
23 individual or other legal entity that is settling with the  
24 United States.  
25  
26  
27

**BUNKER HILL  
REMEDIAL DESIGN and REMEDIAL ACTION**

**STATEMENT OF WORK**

**11/03/92**

**I. INTRODUCTION, DEFINITIONS, AND GENERAL PROVISIONS**

**A. Introduction**

This Statement of Work ("SOW") details the activities to be undertaken by the Settling Defendants in compliance with this Consent Decree. The Work shall be consistent with the decisions set forth in the Bunker Hill 1992 Record of Decision ("1992 ROD") and the 1991 Residential Soils ROD ("1991 ROD") attached at Appendix B to the Consent Decree and performed pursuant to the Consent Decree.

This statement of work will be implemented through the performance of the elements of work described below, including their respective components.

**B. Definitions**

Terms used in this SOW are defined by this Consent Decree, CERCLA and the NCP.

**C. General Provisions**

The Work activities associated with this SOW are final measures. Remedial actions outlined in this scope of work shall meet performance standards. Settling Defendants must obtain written approval from EPA prior to the commencement of any particular treatment or disposal option.

Settling Defendants shall comply with all applicable or relevant and appropriate requirements of law in performing the Work, including obtaining necessary authorizations or permits.

Nothing in the SOW shall be deemed to relieve the respondents named in each of the respective orders of their obligations under the following Immediate Response Actions at the Bunker Hill Superfund Site:

- \* the Bunker Hill Smelter Complex Administrative Unilateral Order (No. 1089-10-21-106) executed October 24, 1989;

- \* the Hillside Revegetation/Stabilization Removal Action Administrative Order on Consent (No. 1090-10-01-106) executed October 1, 1990;
- \* the Bunker Hill Smelter Complex Administrative Unilateral Order (No. 1091-09-15-106) executed September 27, 1991;
- \* the 1992 Residential Soil Removal Action Administrative Order on Consent (No. 1092-04-14-106) executed July 29, 1992.

The Settling Defendants shall undertake the Work required by the outstanding Administrative Orders regardless of whether they are parties to those Administrative Orders.

Unless otherwise specified in this Consent Decree, the Settling Defendants shall begin performance of the Work under this Consent Decree no later than the date of lodging of this Consent Decree and shall continue as specified in the Consent Decree.

Each Element of Work shall be integrated and coordinated with all other Elements of Work, and with all other operations and/or tasks, including, but not limited to, emergency response activities and compliance with Administrative Orders.

In the event that the performance of Work under this SOW results in the alteration, destruction or abandonment of any needed facility at the Site, Settling Defendants shall either repair or replace, as necessary, such facility with one that provides the same level of control or function. The need and schedule for repair or replacement shall be determined by EPA. Any repair or replacement is subject to the approval of EPA.

Whenever Settling Defendants are obligated to perform an activity under this SOW, they may perform the activity themselves or engage a contractor (or contractors) accepted by EPA, unless other arrangements are mutually agreed upon, in fulfillment of their obligation.

## **II. DESCRIPTION OF WORK TO BE PERFORMED, PERFORMANCE STANDARDS AND OBJECTIVES**

This Section sets forth the Elements and Components of Work to be performed pursuant to this Consent Decree and states the Performance Standard and objectives for the Work. The Elements and Components of Work listed below are derived from Section 9 of the 1991 and 1992 RODs. The following elements of work are intended to be a synopsis of the work that is explained in additional detail in the 1991 ROD and the 1992 ROD.

### **A. Hillside Remedial Actions Element of Work**

The Hillside Remedial Actions Element of Work includes the following:

The objective of this work is to stabilize hillside areas within the Site through erosion control and revegetation.

Settling Defendants shall design, construct and operate hillside remedial actions.

Settling Defendants shall implement the October 1990 Administrative Order on Consent for revegetation and stabilization of hillsides within the Site (No. 1090-10-01-106).

Settling Defendants shall provide for revegetation of severely eroding hillside areas having less than 50% cover within areas identified during the Remedial Investigation as having greater cover (50%+) consistent with the methodology outlined in the 1990 AOC.

Settling Defendants shall provide for re-establishment of riparian habitat and a vegetated stream corridor of at least 100 feet throughout the Hillside Areas of the Site.

Monitoring of the performance and maintenance of erosion control measures and sedimentation structures shall continue until revegetation efforts have been successful in controlling erosion and sedimentation of the hillside areas.

In order to minimize contact between Milo Creek surface water and tailings and mine waste rock on the Milo Gulch floor, and reduce contaminant transport to the SFCDR as suspended sediment during runoff events, Settling Defendants shall channelize and line Milo Creek from the Wardner Water System intake to the culvert which directs stream flow beneath Wardner and Kellogg.

## **B. Smelterville Flats Element of Work**

The Smelterville Flats Element of Work includes the following:

The objectives of this work are to control migration of windblown dust, minimize direct contact risk, and control contaminant migration to surface and ground water.

Jig tailings-contaminated alluvium shall be removed from the northwestern portion of Smelterville flats adjacent to the SFCDR for construction of the Constructed Wetland Treatment System Element of Work. This alluvium shall be disposed of in the CIA prior to its closure.

A floodway with a protective dike shall be constructed on the south side of the SFCDR. The floodway shall be a minimum of 500 feet wide and the protective dike shall be designed to protect Smelterville Flats and the Constructed Wetlands Treatment System from a 100 year, 24-hour storm event. Accessible tailings in those portions of the floodplain of the SFCDR being modified for floodway construction shall also be removed and disposed of in the CIA.

All exposed tailings along the banks of the SFCDR within the Site shall be stabilized to prevent erosion, or removed for consolidation within the CIA.

Remedial designs for any modifications within the floodway and all bank stabilization measures shall incorporate aquatic habitat considerations. Appropriate State and Federal natural resource agencies shall be consulted in developing habitats.

The jig tailings/alluvium mixture in Smelterville Flats remaining after the actions described above shall be capped with a minimum of six inches of soil to enhance revegetation efforts and minimize direct contact risk. Alternatively, contaminated surfaces shall be covered with a more permanent barrier, consistent with land use (revegetation is the preferred remedial action and will be required unless land use necessitates a more durable barrier).

If future land use conversions occur in Smelterville Flats, a barrier consistent with the new land use shall be required in those locations where lead concentrations in the top foot of soil exceed 1000 ppm.

## **C. Central Impoundment Area (CIA) Element of Work**

The CIA Element of Work includes the following:

The objective of this work is to minimize releases from this source by installing a cap that minimizes infiltration through tailings and Central Treatment Plant (CTP) sludges disposed of in this area,



and intercepting groundwater seeps.

The CIA shall serve as a repository for consolidation of jig tailings/alluvium, gypsum and slag removed during performance of other elements of work described in this statement of work.

The slag pile on the west end of the CIA shall either be relocated to the Smelter Complex or the east cell of the CIA prior to capping of the CIA.

Prior to closure of the CIA, material accumulations originating from the 1982 Smelter Complex cleanup shall be removed and returned to the Smelter Complex. A determination shall be made regarding whether the material will be recycled, reprocessed or treated via cement-based stabilization prior to being capped in the Smelter Closure.

After grading of the CIA surface and dikes to promote runoff, a cap, composed of a minimum of twelve inches of low permeability material overlain by a minimum of six inches of clean soil suitable for revegetation, shall be installed. Other engineering designs meeting these criteria will be considered by EPA.

The CIA cap shall have a hydraulic conductivity of less than  $10^{-6}$  cm/sec.

Cap design and revegetation requirements shall be consistent with potential future land uses.

Surficial soils on the CIA dikes and areas surrounding the CIA shall be capped, as appropriate, consistent with current land use. At a minimum, six inches of clean soil shall be placed to enhance revegetation.

Groundwater seeps from the CIA shall be collected and conveyed to the Collected Water Wetlands Component. The seep collection system shall be designed to maximize the efficient interception of contaminated ground water from the seeps.

#### **D. Page Pond Element of Work**

The Page Pond Element of Work includes the following two Components:

1. Page Pond Component
2. Humboldt and Grouse Creeks Component

The objective of the work is to minimize releases from these sources by consolidating, capping and revegetation.

## 1. Page Pond Component

Approximately 40-60,000 cubic yards of jig tailings shall be removed from the West Page Swamp area and subsequently placed on the Page Pond benches for use as a sub-base for a vegetated cap. The amount of material to be removed from West Page Swamp will be determined by EPA during Remedial Design and shall consider current vegetated status, surficial soil contaminant concentrations, water levels and habitat. Appropriate state and federal natural resource management agencies shall be consulted in determining the most appropriate design.

Page Pond shall be regraded, capped with soils removed from residential areas and then revegetated.

Page Pond impoundment dikes shall be regraded and then vegetated after placement of a minimum of six inches of clean soil.

Existing fencing shall be maintained to limit access.

Wetlands associated with the Page Pond areas shall be evaluated for water quality, habitat considerations, and biomonitoring in order to assess environmental conditions resulting from remedial actions.

## 2. Humboldt and Grouse Creeks Component

The objective of this component is to minimize the contamination of these surface streams by preventing contact with jig tailings.

Humboldt and Grouse Creeks shall be isolated, to the degree practicable, from contact with tailings accumulations by the use of diversions and stream channel modifications.

Final configuration of any channel modifications shall take into account habitat considerations. Appropriate State and Federal natural resource management agencies shall be consulted in determining the most appropriate design.

## **E. Smelter Complex and Mine Operations Area (MOA) Element of Work**

The Smelter Complex and MOA Element of Work includes the following three Components:

1. Lead Smelter Component
2. Zinc Plant Component
3. Mine Operations Area Component

The objectives of this work are to limit direct contact with contaminants and control migration of contaminants to surface and

ground water and air.

Following removal of salvageable items, such as steel, timber and equipment, reprocessing, and recycling of material accumulations and soils when possible, and cement-based stabilization of Principal Threat material as defined in the 1992 ROD within the Smelter Complex and MOA, the Lead Smelter and Zinc Plant structures shall be demolished in place and prepared for capping.

Following demolition of the Lead Smelter and Zinc Plant and consolidation of material accumulations and contaminated soils, including treated Principal Threat materials, both facilities will be closed.

Principal Threat materials remaining after recycling and reprocessing options have been implemented shall be treated with cement-based stabilization/fixation. The objective of cement-based stabilization/fixation is to reduce the mobility of contaminants. Relevant and appropriate requirements of RCRA Land Disposal Restrictions for cement-based stabilization of Principal Threat waste shall be attained through design of a cement-based stabilization mixture that will meet percent reduction goals or extract concentration criteria outlined in the RCRA LDRs for inorganic materials using a rain water leach test to simulate onsite conditions.

Salvageable material shall be decontaminated consistent with the proposed rule for Best Demonstrated Available Technology (BDAT) treatment technologies for contaminated debris published in the Federal Register, January 9, 1992.

Recycling and reprocessing of material accumulations and demolition debris shall be used to the extent practicable in order to minimize material in the Smelter Complex closure. MOA Structures shall be decontaminated consistent with intended use and maintained for future use, where feasible, or demolished.

Treated principal threat materials shall be consolidated in concrete substructures (basements, storage bins, etc.) within the Lead Smelter Complex, unless other areas are determined to be appropriate by EPA during Remedial Design.

Closure of the Lead Smelter and Zinc Plant shall consist of a minimum of one foot of low permeability material or a soil/geosynthetic cap (or an appropriate combination of the two) that will have an in place hydraulic conductivity of less than or equal to  $10^{-7}$  cm/sec to minimize water infiltration and subsequent contaminant migration. Other appropriate RCRA 40 CFR Part 264, Subpart G requirements for closure of existing facilities shall be incorporated into the closure design, including: leachate collection and treatment, runoff and runoff controls, monitoring,

and operation and maintenance considerations.

A cutoff wall shall be constructed south of the Zinc Plant in order to divert uncontaminated surface and groundwater around the closed industrial complex to the SFCDR.

A second cutoff wall shall be constructed at the northern end of Government Gulch to facilitate collection of contaminated ground and surface water. This water shall be conveyed to the Collected Water Wetlands Component for treatment.

Bunker Creek base surface water flows shall be collected and conveyed to the Constructed Water Wetlands System for treatment if water quality sampling indicates exceedances of FWQC.

Prior to demolition, PCB-containing equipment shall be managed consistent with applicable Toxic Substances Control Act (TSCA) regulations.

Asbestos containing materials shall be disposed of consistent with applicable TSCA regulations (40 CFR Section 61).

Lead and Zinc tall stacks shall be decontaminated consistent with Best Demonstrated Available Technology (BDAT) treatment technologies for contaminated debris published in the Federal Register, January 9, 1992.

The A-1 Gypsum Pond sediments located in Magnet Gulch shall be removed and relocated to the CIA prior to CIA closure.

The A-4 Gypsum Pond sediments located north of McKinley Avenue at the mouth of Magnet Gulch shall either be capped in place or moved to the CIA along with the A-1 Gypsum Pond sediments. The final determination regarding this aspect of the selected remedy shall be based upon the engineering feasibility of closing the A-4 Gypsum Pond in place and additional considerations of ground and surface water hydrology in that area. If a cap is selected, it must minimize infiltration through the A-4 Gypsum Pond and require only low maintenance.

Other existing solid waste landfills within the Smelter Complex shall be closed consistent with appropriate RCRA 40 CFR Part 264 requirements (Subpart N).

A low permeability soil cover system shall be constructed over the solid waste landfills located on the east side of Deadwood Gulch south of the mine/mill crusher plant in order to reduce surface infiltration through potential source materials.

Upon completion of Remedial Activities, all disturbed areas shall be revegetated or other appropriate permanent barrier installed.

## 1. Lead Smelter Component

Materials to be consolidated in the Lead Smelter closure shall include, but not be limited to:

- \* contaminated materials and soils from the "boneyard area" south of the Lead Smelter
- \* slag from the west cell of the CIA to aid in preparation of the site for the final cap
- \* residential soils collected during other remedial actions which are needed to facilitate preparation of the site for capping and revegetation
- \* Smelter Complex cleanout materials (removed from the Smelter Complex by Gulf in 1982) currently located in the CIA
- \* material removed within the MOA during remediation of that area, including the "boulevard area"
- \* material accumulations and contaminated soils, including former waste disposal or holding ponds sediments within the Smelter Complex
- \* cleanup material from MOA buildings decontaminated to allow for future industrial utilization
- \* Magnet Gulch cleanup material accumulations and contaminated soils
- \* treated Principal Threat material, including the Copper Dross Flue Dust Pile, which is to be treated using cement-based stabilization
- \* other materials/soils determined by EPA during Remedial Design to be appropriate to consolidate in this area

## 2. Zinc Plant Component

The Zinc Plant closure shall include material from the Zinc Plant, Phosphoric Acid/Fertilizer Plant areas (excluding the fertilizer warehouse), contaminated soils in the vicinity of the Zinc Plant and upper Government Gulch, and material, debris, and contaminated soils from the fertilizer plant.

Any materials destined for the Zinc Plant closure may also be placed in the Lead Smelter closure if the Zinc Plant closure is at capacity.

### 3. Mine Operations Area Component

Surface soils and material accumulations within the MOA shall either be removed for consolidation within the Lead Smelter closure, treated as Principal Threat wastes and consolidated within the Lead Smelter closure, or capped in place with a barrier consistent with land use.

In determining whether soils in the MOA and Smelter Complex (outside of the capped area) should be removed and consolidated in the Lead Smelter and Zinc Plant closures, an evaluation of the impacts of material accumulations shall be conducted.

All material accumulations and associated soils shall be removed and consolidated in the Lead or Zinc Plant closures if they exhibit concentrations in excess of what would typically be attributed to mine waste rock or tailings.

Remedial Design shall include a process for determining the extent of excavation in areas impacted by material accumulations.

A minimum of six inches of clean soil or other barrier appropriate to land use shall be applied where surface concentrations exceed 1000 ppm lead.

All acid mine drainage from the Reed and Kellogg tunnels or other Bunker Hill mine portals where the acid mine drainage is collected shall be conveyed to the CTP for pretreatment followed by further treatment in the Collected Water Wetland Component.

During Remedial Design the adequacy of the existing CTP to pretreat mine water shall be evaluated to determine if modifications are needed to meet water-quality-based effluent limits imposed on the Constructed Wetland Treatment System outfall.

The existing storm water drainage system in the MOA shall be maintained and the mill settling pond (Concentrator Reservoir) shall be closed. Any sludge remaining in the bottom of the pond shall be disposed of in the Lead Smelter closure.

#### **F. Rights-of-Way (ROW) Element of Work**

The Rights-of-Way Element of Work includes the following:

The objectives of the work are to minimize contaminant migration through air and water and direct contact risk.

Right of Ways include all state, county, local and private roads.

All ROWs shall receive one or more of the following treatments: access control, capping (i.e. barrier consistent with land use), or

removal/replacement.

Where caps are determined to be appropriate during Remedial Design, they shall be consistent with land use and shall have sufficient durability to minimize operation and maintenance.

Capping shall be the predominant treatment used in non-populated areas; however, for ROWs within the Smelter Complex/MOA, the favored treatment shall be removal and replacement.

Within residential areas, ROWs adjacent to residential properties shall be treated consistent with the remedial action selected in the 1991 ROD.

All ROWs contributing to contaminant migration via water or air shall be addressed.

#### **G. Commercial Buildings and Lots Element of Work**

The Commercial Building and Lots Element of Work includes the following:

The objective of the work is to minimize contaminant migration and direct contact risk.

In existing commercial settings, surface soils exceeding a lead concentration of 1000 ppm in the top one foot must receive a protective barrier consistent with land use. Barriers shall consist of a minimum of six inches of clean soils or gravel, or a paved surface.

Barriers for commercial properties used predominantly by sensitive populations shall include a 12 inch soil barrier.

For new commercial properties, necessary barriers shall be consistent with future land use.

Excavated soils shall be consolidated within the Page Pond tailing impoundment or the Smelter Complex, until closure of the Smelter Complex is complete.

With respect to interiors of commercial properties, the Institutional Controls Program will encourage interior cleaning of properties and provide guidelines for replacement of carpets, floors, and insulation of existing structures.

#### **H. Residential Interiors Element of Work**

The Residential Interiors Element of Work includes the following:

The objective of the work is to protect the health of Site residents by minimizing direct contact risk.

The existing blood lead monitoring program, in conjunction with educational programs provided by the Panhandle Health District shall be continued.

The existing high efficiency vacuum loan program shall be continued.

Institutional Control Programs shall be developed for home remodeling activities, including the normal replacement of carpets, floors, and attic insulation.

All homes with house-dust lead concentrations equal to or exceeding 1000 ppm shall have a one-time cleaning of residential interiors after completion of Site-wide remedial actions that address fugitive dust. If subsequent interior house dust sampling indicates that house dust lead concentrations exceed a Site-wide average of 500 ppm, the need for additional cleaning shall be evaluated.

Home interiors of children identified through health screening shall be evaluated and, if needed, site-specific remediations shall be performed.

Additional interior dust studies shall be developed during remedial design to identify sampling and decision-making criteria for the one-time cleaning.

#### **I. Future Development in Non-Populated Areas Element of Work**

The Future Development in Non-Populated Areas Element of Work includes the following:

The objective of the work is to safely develop currently undeveloped areas.

In areas where surficial (top one foot) soil lead concentrations exceed 1000 ppm, the Institutional Controls Program will guide the establishment of effective barriers.

In areas where surficial (top one foot) soil lead concentrations are below 1000 ppm, no special conditions will be required beyond those typically required for new developments. The exception to this will be creation of a new residential development in a currently undeveloped area of the Site. Such a development shall have an average residential yards lead concentration less than 350 ppm, with no property exceeding 1000 ppm, and shall be effectively isolated from nearby areas that would expose residents to surficial lead soil levels exceeding 1000 ppm. New developments not meeting



these criteria will require remediation prior to residential use as described in the Residential Soils ROD.

#### **J. Constructed Wetland Treatment Systems (CWTS) Element of Work**

The Constructed Wetland Treatment System Element of Work includes the following two components:

1. Collected Water Wetland Component
2. Ground Water Wetland Component

The objective of the work is to provide innovative, effective treatment of contaminated surface and ground waters prior to their discharge/recharge to the SFCDR.

Settling Defendants shall design and construct the Constructed Wetland Treatment System and provide for its operation and maintenance. Operation and Maintenance shall include any and all activities undertaken or required to be undertaken for the operation and maintenance of the CWTS and/or any other activity necessary to ensure the continued effective operation of the CWTS.

##### 1. Collected Water Wetland Component

The Collected Water Wetland Component will occupy approximately 74 acres and shall be constructed in Smelterville Flats.

This Component shall be designed to maximize the removal of contaminants from treated waste streams as early as practicable.

CIA seeps, pretreated acid mine drainage, contaminated surface and ground waters from Government Gulch, leachate from the Lead and Zinc Plant closures, and other surface water flows selected during Remedial Design shall be collected and conveyed to the Collected Water Wetland Component for treatment.

Treatment removal efficiencies for contaminants of concern, including zinc, cadmium, lead, arsenic and cobalt, in this Component shall equal or exceed 90%, and the effluent from the system shall comply with water-quality-based effluent limits prior to discharge to the SFCDR.

Should this Component not meet both the 90 % reduction criterion and the water-quality-based effluent limits, pretreatment of influent streams or modifications to the treatment systems shall be required to bring this Component into compliance.

##### 2. Ground Water Wetland Component

The Ground Water Wetland Component will occupy approximately 34

acres and shall be constructed in the western portion of Smelterville Flats.

Upper zone ground water flowing toward the SFCDR in the western portion of Smelterville Flats shall be treated by this Component

Treatment removal efficiencies for contaminants of concern, including zinc, cadmium, lead, arsenic and cobalt, in this Component shall equal or exceed 90%, and the effluent from the system shall comply with water-quality-based effluent limits prior to discharge to the SFCDR. If treatment removal efficiencies are not met according to the EPA-approved remedial design and implementation schedule, modifications to the treatment systems shall be required to bring the Component into compliance.

Should passive collection of ground water requiring treatment not prove effective, active collection (i.e. pumping) of ground water will be initiated.

#### **K. Public Water Supply Element of Work**

The Public Water Supply Element of Work includes the following:

The objective of the work is to assure adequate supplies of water to minimize exposure to onsite surface and ground waters.

Except as noted below, all ground water wells within the Site that are in the main valley aquifer, either upper zone, lower zone, or other contaminated wells within the Site shall be closed or abandoned according to the State of Idaho requirements.

Existing domestic wells selected for closure shall be replaced with an alternative water supply if the residence is not already serviced by a municipal water system.

Should offsite potable water become unavailable, additional actions shall be required to assure a safe drinking water supply until onsite sources are restored to a suitable quality.

Industrial wells shall be replaced by an alternative water supply, as needed.

Wells selected for monitoring and aquifer tests shall not require replacement unless they become damaged or otherwise rendered inoperable.

Monitoring wells that are not required for continued monitoring shall be closed.

#### **L. Soil Action Levels Element of Work**

The Soil Action Levels Element of Work includes the following:

The objective of the work is to minimize contaminant migration and direct contact risk.

Decisions regarding how a particular area of surface contamination is addressed shall be a function of the area it is within.

Areas that are primarily impacted by a mixture of tailings and alluvium (soil) are suitable for capping.

Areas that have been impacted by contamination from mineral processing facilities (e.g. lead smelting, zinc refining, etc.) are slated for removal since these wastes are generally of higher concentration and require a greater level of management in order to insure a protective remedy.

For purposes of this SOW, clean replacement soils shall contain less than 100 ppm lead, 100 ppm arsenic and 5 ppm cadmium.

#### **M. Operation and Maintenance Element of Work**

The Operation and Maintenance Element of Work includes the following:

The objective of routine site maintenance is to ensure that facilities and control measures at the Site continue to be effective and achieve performance standards over the long-term.

Settling Defendants shall provide, on a scheduled basis, routine site maintenance at the Site.

The Settling Defendants shall also provide on an unscheduled basis, routine site maintenance within 24 hours or sooner of verbal notice from EPA of the need for such maintenance.

Prior to commencing Work under this Element of Work, Settling Defendants shall complete an inventory of existing Site conditions, including an assessment of existing Site facilities and controls. Based upon such inventory, Settling Defendants shall propose a routine site maintenance program and schedule (i.e. Work Plan) for EPA approval.

#### **N. Institutional Controls Program (ICP) Element of Work**

The Institutional Controls Program (ICP) Element of Work includes the following:

The objectives of this work are to protect the health of residents and users of Site land and to guide future development of Site land.

The ICP Element of Work shall consist of: an environmental health code; performance standards for remedial actions (e.g. specifications for barriers); an educational program for residents and contractors to familiarize them with ICP requirements; and, a testing and monitoring program to evaluate the effectiveness of the ICP. The Health Intervention Program, as described in the 1992 ROD, is also a component of the ICP. The ICP is further discussed in the 1992 ROD.

As a component of this statement of work, Settling Defendants shall provide funding for the ICP. The ICP will be developed by the Panhandle Health District, with input from EPA and the State of Idaho. The ICP is expected to be adopted and implemented by local regulatory authorities in accordance with a cooperative agreement with EPA.

#### **O. Residential Soils Element of Work**

The Residential Soils Element of Work includes the following:

The objective of the work is to minimize contaminant migration through air and water and direct contact risk.

All residential properties shall be sampled at the 0 to 1, 1 to 6, 6 to 12 and 12 to 18 inch intervals for determination of the 1000 ppm lead threshold concentration.

The removal of contaminated soil and replacement with compacted clean material shall be as follows:

1. If the 0 to 1 or 1 to 6 inch samples exceeds 1000 ppm lead but the 6 to 12 inch interval does not exceed 1000 ppm, six inches of contaminated material shall be removed. If the 6 to 12 inch sample exceeds 1000 ppm lead, then twelve inches of soil shall be removed.
2. If the 6 to 12 inch interval exceeds 1000 ppm lead but the 0 to 1 or 1 to 6 inch samples does not exceed 1000 ppm lead, twelve inches of soil shall be removed.
3. If the 0 to 1, 1 to 6, and 6 to 12 inch samples do not exceed 1000 ppm lead, the property will not require remediation.

All produce garden areas in every yard shall receive 24 inches of clean material.

The exact nature of each remediation shall be determined on a case-by-case basis.

In all twelve inch removals, if the 12 to 18 inch sample exceeds 1000 ppm lead, a visible marker, such as an erosion control fabric, shall be placed prior to backfilling with clean fill.

After replacement with clean fill, yards shall be revegetated with sod. Hillside and areas not currently lawns shall be stabilized with native grasses.

Contaminated material shall be disposed of at the Page Pond Impoundment or the Smelter Complex prior to their closures.

Remediated areas where EPA determines that revegetation is not necessary may receive clean gravel instead of soil.

#### **P. Monitoring Element of Work**

The objectives of the work are to monitor air, ground water and surface water in order to: (1) evaluate compliance with ARARs in surface and groundwaters; (2) assess the status of environmental receptors (i.e. biological monitoring); (3) evaluate the performance of specific remedial actions and their respective O&M programs; (4) evaluate success in meeting public health protection goals (i.e., continuation of blood lead screening program); and, (5) evaluate the adequacy of control measures instituted during implementation of remedial actions.

In addition to the monitoring requirements specified above, each remedial design will require an individual monitoring program to evaluate the effectiveness of the remedial action.

The Settling Defendants shall be responsible for all data collection and technical evaluation during the period of the Work.

#### **Q. General Remedial Design Considerations Element of Work**

The objective of the work is to protect human health and the environment during remedial actions.

During remedial construction activities, dust control measures shall be implemented Site wide to prevent the transport of contaminated material.

Dust control activities shall include, but not be limited to, the use of water to wet down areas or polymeric, chemical or physical surface sealers for temporary dust control.

Access controls shall be used to prevent exposures during remedial

actions. Access controls shall include, but not be limited to, fencing, signs, and security patrols and guards. Access control shall be maintained in all areas where it currently exist until the remediation in that area is completed.

Institutional controls shall also be applied restricting access to potential source areas to control transport of contaminants within the Site and exposures to contaminants of concern during construction activities.

Fire control shall be in place until remedial actions are completed in the Smelter Complex and MOA. Fire control shall include, but not be limited to, quarterly inspections of all structures until they are either demolished or decontaminated.

Necessary fire protection materials, including water supplies, shall be maintained as long as the potential for release of contaminants through fire exists. This shall include coordination with the local fire district to provide the necessary information for safe access should it be necessary to fight a fire.

Also included in fire control is the use of fire protection during all activities involving potential ignition sources, such as cutting and welding activities. These fire control activities include, but are not limited to, wetting down areas prior to these activities, having fire extinguishers at hand, and providing a fire watch for an appropriate period after all ignition sources have been abated.

The management of the release of contaminants during remedial construction activities shall also be performed. This shall include, but not be limited to, the management of high flow runoff to minimize sediment transport to surface water.

Storm water management during remedy implementation shall be consistent with all State and local requirements. Best Management Practices employed during remedial action implementation shall include extensive use of storm water detention facilities to minimize impacts from runoff events until monitoring of remedial actions has demonstrated their effectiveness in mitigating contaminant loading from runoff events.

Any repairs required to community infrastructure, such as roads and utilities, due to the implementation of remedial actions required in this SOW, shall be implemented.

### III. DESCRIPTION OF PLANS AND REPORTS

This Section sets forth a description of the types of information that should be included in the plans and reports listed below. This Section is intended to provide a framework for developing such plans and reports, and is not intended to be a prescriptive explanation of their content. Other information and requirements may be prescribed by EPA through the review of the deliverables and other documents prepared by the Settling Defendants under this Consent Decree. Unless otherwise specified, the description is not meant to distinguish between draft and final versions of the documents.

The following is a list of the plans and reports described in this Section. Upon EPA's request any of these may be submitted in electronic form.

#### General Project Management

- \* Project Management Monthly Reports
- \* Technical Memoranda

#### Remedial Design

- \* Remedial Design Work Plans
- \* Health and Safety Plans
- \* Remedial Design Quality Assurance Project Plans
- \* Remedial Design Sampling and Analysis Plans
- \* Preliminary Design Submittal
- \* Intermediate Design Reports
- \* Final Design Reports

#### Remedial Action Work Plans

- \* Remedial Action Work Plans
- \* Health and Safety Plans
- \* Remedial Action Quality Assurance Project Plans
- \* Remedial Action Sampling and Analysis Plans

- \* Operations and Maintenance Plans
- \* Contingency Plans
- \* Monitoring Plans
- \* Construction As-Built Reports
- \* Construction Completion Reports
- \* Achievement of Performance Standard Reports
- \* Completion of Remedial Action Reports
- \* Completion of the Work Reports
- \* Site-wide Monitoring Plans

At this time EPA expects a set of deliverables, as specified below, to be produced for each Component or Element of Work. However, there may be some Components or Elements of Work which could be combined. These items are more specifically described below.

#### **A. General Project Management**

##### **1. Project Management Monthly Reports**

The Project Management Monthly Reports shall be a consolidated status report on all Work. The Reports shall be divided into separate sections providing the status of the individual Elements and Components of Work under this SOW. The Reports shall include, but are not limited to, the following basic information:

- \* Introduction, including the purpose, general description of the Work
- \* Activities/tasks undertaken during the reporting period, and expected to be undertaken during the next reporting period.
- \* Deliverables and milestones completed during the reporting period, and expected to be completed during the next reporting period.
- \* Identification of issues and actions that have been or are being taken to resolve the issues.
- \* Status of the overall project schedules and any proposed schedule changes.



## 2. Technical Memoranda

The Technical Memoranda are the mechanism for requesting modification of plans, designs, and schedules. Technical memoranda are not required for non-material field changes that have been approved by EPA. In the event that Settling Defendants determine that modification of an approved plan, design, or schedule is necessary, Settling Defendants shall submit a written request for the modification to the EPA Project Coordinator which includes, but is not limited to, the following information:

- \* General description of and purpose for the modification.
- \* Justification, including any calculations, for the modification.
- \* Actions to be taken to implement the modification, including any actions related to subsidiary documents, milestone events, or activities affected by the modification.
- \* Recommendations.

## **B. Remedial Design**

### 1. Remedial Design Work Plans

The Remedial Design Work Plans shall provide for design of the remedy set forth in the ROD in accordance with the SOW. The Remedial Design Work Plans shall include plans and schedules for the implementation of all remedial design tasks identified below.

These Remedial Design Work Plans shall be the primary plans to control and guide the design of the Components or Elements of Work performed by the Settling Defendants under this Consent Decree. These Remedial Design Work Plans shall include, but are not limited to, the following information:

- \* An overall description of the work to be performed with cross-references to other documents containing more specific details.
- \* The technical approach for undertaking, monitoring, and completing the Component or Element of Work. The discussion should include a description of:
  - \* Procedures, specific activities and objectives of such activities

- \* Facilities to be installed
- \* Performance Standards
- \* Identification of and plans for obtaining any necessary off-site access, permits, or approvals
- \* Identification of and plans for complying with ARARS
- \* Identification of and plans for disposing of any residuals generated
- \* A description of the deliverables and milestones.
- \* The schedule for the completion of all Remedial Design activities.
- \* Plan for integrating, coordinating, and communicating with EPA, IDHW, and other government officials.

## 2. Health and Safety Plans

The Health and Safety Plans shall establish health, safety, and emergency response procedures for field remedial design activities associated with the Components or Elements of Work to be performed by the Settling Defendants. The Plans shall conform to applicable or appropriate Occupational Health and Safety Administration (OSHA) regulations, requirements, and guidance. They shall include, but are not limited to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Emergency and post-emergency procedures, including the designation of the Settling Defendants' emergency response coordinator.
- \* Standard jobsite health and safety considerations and procedures, including hazards evaluation and chemicals of concern.
- \* Communication and notification procedures within the Settling Defendants' organization, and with EPA, State, other government officials, and community members.
- \* Personal Protection Equipment and instructions/procedures to ensure personnel protection and safety.
- \* Monitoring plans.

- \* Medical surveillance programs and training.
- \* Recordkeeping and reporting procedures.

### 3. Remedial Design Quality Assurance Project Plans

The Remedial Design Quality Assurance Project Plans shall establish quality assurance and quality control procedures associated with the design aspects of the Component or Element of Work to be performed by the Settling Defendants. The Remedial Design Quality Assurance Project Plans shall conform to EPA guidance, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980, (QAMS-005/80); "Data Quality Objective Guidance", (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual", May 1978, revised November 1984; and, appropriate EPA Region 10 guidance. The Remedial Design Quality Assurance Project Plans shall include, but are not limited to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Audits.
- \* Routine procedures, including internal quality control checks
- \* Corrective action procedures.
- \* Design-related QA/QC.

### 4. Remedial Design Sampling and Analysis Plans

The Remedial Design Sampling and Analysis Plans shall establish the sampling procedures associated with each Component or Element of Work to be performed by the Settling Defendants.

The Remedial Design Sampling and Analysis Plans shall conform to EPA guidance. They shall include, but are not limited to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Sampling rationale and data quality objectives.
- \* Sampling locations and frequency.

- \* Sampling equipment and sampling, preservation, preparation and cleaning procedures.
- \* Sampling chain of custody procedures.
- \* Analytical methods and procedures.
- \* Data reduction and validation.
- \* Quality control procedures, including internal quality control checks.
- \* Routine monitoring.

#### 5. Preliminary Design Submittals

The Preliminary Design Submittals shall include, at a minimum, the following:

- \* Design criteria
- \* Results of treatability studies where appropriate
- \* Results of additional field sampling and pre-design work
- \* Project delivery strategy
- \* Preliminary plans, drawings and sketches
- \* Required specifications in outline form
- \* Preliminary construction schedule

#### 6. Intermediate Design Reports

The Intermediate Design Reports shall be a continuation and expansion of the Preliminary Design Submittals. The Intermediate Design Reports shall include 30% and 90% design submittals. They shall include, but are not limited to, the following:

- \* Design drawings.
- \* Design specifications.
- \* Design calculations.
- \* General design concept and criteria of facilities to be constructed.
- \* Description of existing facilities and identification of

any that will be altered, destroyed, or abandoned during construction.

- \* Description of off-site facilities required or affected.
- \* Analysis/discussion of Performance Standards and how they have been incorporated into the design.
- \* Design parameters dictated by the Performance Standards or ARARs.

## 7. Final Design Reports

The Final Design Reports represents the 100% design final plans and specification, and shall include the basic information described for the Draft Design Reports in addition to incorporating EPA's comments and modifications.

## **C. Remedial Action**

### 1. Remedial Action Work Plans

The Remedial Action Work Plans shall provide for the construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittals. The Remedial Action Work Plans shall be the primary plans to control and guide the construction of the Components or Elements of Work performed by the Settling Defendants under this Consent Decree. The Remedial Action Work Plans shall include, but are not limited to, the following:

- \* An overall description of the work to be performed with cross-references to other documents containing more specific details.
- \* The technical approach for undertaking, monitoring, and completing the Component or Element of Work. The discussion should include a description of the procedures, specific activities and objectives of such activities, and facilities to be installed; Performance Standards; identification of and plans for obtaining any necessary off-site access, permits, or approvals; identification of and plans for complying with ARARs; and identification of and plans for disposing of any residuals generated.
- \* A description of the deliverables and milestones.
- \* The schedule for the completion of the remedial action.

- \* Plan for integrating, coordinating, and communicating with EPA, IDHW, and other government officials.

## 2. Health and Safety Plans

The Health and Safety Plans shall establish health, safety, and emergency response procedures for field activities associated with the construction of each Component or Element of Work to be performed by the Settling Defendants. The Plans shall conform to applicable or appropriate Occupational Health and Safety Administration (OSHA) regulations, requirements, and guidance. They shall include, but are not limited to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Emergency and post-emergency procedures, including the designation of the Settling Defendants' emergency response coordinator.
- \* Standard jobsite health and safety considerations and procedures, including hazards evaluation and chemicals of concern.
- \* Communication and notification procedures within the Settling Defendants' organization, and with EPA, State, other government officials, and community members.
- \* Personal Protection Equipment and instructions/procedures to ensure personnel protection and safety.
- \* Monitoring plans.
- \* Medical surveillance programs and training.
- \* Recordkeeping and reporting procedures.

## 3. Remedial Action Quality Assurance Project Plans

The Remedial Action Quality Assurance Project Plans shall establish quality assurance and quality control procedures associated with the construction of each Component or Element of Work to be performed by the Settling Defendants. They shall conform to EPA guidance, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980, (QAMS-005/80); "Data Quality Objective Guidance", (EPA/540/G87/003 and 004); and appropriate EPA Region 10 guidance. The Remedial Action Quality Assurance Project Plans shall include, but are not limited

to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Audits.
- \* Routine procedures, including internal quality control checks.
- \* Corrective action procedures.
- \* Construction-related QA/QC.

#### 4. Remedial Action Sampling and Analysis Plans

The Remedial Action Sampling and Analysis Plans shall establish the sampling procedures associated with the construction of each Component or Element of Work to be performed by the Settling Defendants.

The Remedial Action Sampling and Analysis Plans shall conform to EPA guidance. They shall include, but are not limited to, the following basic information:

- \* Overall description of the Plan, including purpose and a general description of the Component or Element of Work covered by the Plan.
- \* Sampling rationale and data quality objectives.
- \* Sampling locations and frequency.
- \* Sampling equipment and sampling, preservation, preparation and cleaning procedures.
- \* Sampling chain of custody procedures.
- \* Analytical methods and procedures.
- \* Data reduction and validation.
- \* Quality control procedures, including internal quality control checks.
- \* Routine monitoring.

## 5. Operation and Maintenance Plans

Operation and Maintenance Plans will be provided for each Element or Component of Work. These operation and maintenance plans will include a description of the operation and maintenance, and monitoring required for the Element or Component of Work, including, but not limited to, the following:

- \* Operational procedures.
- \* Operational emergency response.
- \* Maintenance procedures and schedules.
- \* Monitoring procedures and schedules.
- \* Parts and equipment inventory.
- \* Compliance plan that describes the procedures to be used to guide the compliance testing activities and acceptance procedures for demonstrating compliance with the objectives and Performance Standards associated with the particular Component or Element of Work.

## 6. Construction As-Built Reports

The Construction As-Built Reports shall include, but are not limited to, the following:

- \* Overall description of the constructed Component or Element of Work and all associated facilities, appurtenances, and piping.
- \* As-built plans and specifications.
- \* Construction QA/QC records.
- \* Summary of any modifications implemented by Technical Memoranda.

## 7. Construction Completion Reports

The Construction Completion Reports certify the completion of construction of a particular Component or Element of Work. The Reports shall include, but are not limited to, the following:

- \* Overall description of the Report, including purpose and a general description of the Component or Element of Work covered by the Report.



- \* Certification of construction completion, including completed punch list from walk-through, and certification by a Professional Engineer registered in Idaho that construction activities have been completed according to final design.

#### 8. Achievement of Performance Standards Reports

The Achievement of Performance Standards Reports shall be submitted annually for a minimum of five years after the completion of construction and shall serve as the Settling Defendants' documentation supporting achievement of the Performance Standards. The Reports shall include, but are not limited to, the following information:

- \* Overall description of the Report, including purpose and a general description of the component or Element of Work covered by the Report.
- \* Documentation supporting that the Performance Standards, as appropriate, have been met.
- \* Contingency plans in the event performance standards are not achieved.

#### 9. Completion of Remedial Action Reports

The Completion of Remedial Action Reports shall be submitted after documentation of at least five years of achieving the relevant performance standards. The reports shall include, but are not limited to, the following:

- \* General description of the Element of Work that was undertaken, including objectives, period of operation, and performance standards.
- \* Documentation of the operations and maintenance costs of the remedial action undertaken during the minimum five year period that performance standards were achieved.
- \* Estimation of future operations and maintenance costs for the life of the remedial action, and the establishment of a funding mechanism to cover such future costs.
- \* Demonstration that all obligations under a specific Element of Work under this SOW and Consent Decree have been satisfactorily completed or achieved by the Settling Defendants in accordance with the Consent Decree.

#### 10. Completion of the Work Report

This report shall be submitted after all phases of the Work (including O & M) have been completed in full satisfaction of the requirements of this Consent Decree. The specific requirements of this report are set forth in Paragraph 48 of the Consent Decree.

#### 11. Site-wide Monitoring Plan

In addition to the monitoring plans specified for the individual Components or Elements of Work above, a Site-wide monitoring plan shall be developed. This Site-wide monitoring will be a continuation of the Site-wide monitoring program currently in use under the 1992 Administrative Order on Consent. The purpose of this Site-wide monitoring plan is to: continue monitoring the overall trends in the quality of air, surface water and groundwater across the Site; and, to coordinate and supplement the monitoring efforts on individual Components or Elements of Work throughout the Site.

#### IV. OVERALL PROJECT SCHEDULE and CRITICAL PATH ANALYSIS

The Overall Project Schedule and Critical Path Analysis provides:

- \* a master schedule for all significant milestone events and activities,
- \* a list of all deliverables for all Components or Elements of Work specified below and a master schedule for the production of these deliverables, and
- \* a critical path analysis for the completion of all Components or Elements of Work.

This Overall Project Schedule and Critical Path Analysis will list the deliverables associated with each Component or Element of Work. This schedule will be developed during the Consent Decree negotiations and, upon approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.